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EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 24th July, 2001:—

BILL No. 37 OF 2001

A Bill further to amend the Negotiable Instruments Act, 1881.

Be it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

- | | | |
|-------------|--|---------------------------|
| 26 of 1881. | 1. This Act may be called the Negotiable Instruments (Amendment) Act, 2001. | Short title. |
| | 2. In section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act),— | Amendment of section 138. |
| | (i) for the words “a term which may be extended to one year”, the words “a term which may be extended to two years” shall be substituted; | |
| | (ii) in the proviso, in clause (b), for the words “within fifteen days”, the words “within thirty days” shall be substituted. | |
| | 3. In section 142 of the principal Act, after clause (b), the following proviso shall be inserted, namely:— | Amendment of section 142. |
| | “Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.”. | |

Insertion of
new sections
143 to 147.

4. After section 142 of the principal Act, the following sections shall be inserted, namely:—

Power of
Court to try
cases
summarily.

“143. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

2 of 1974.

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

Mode of
service of
summons.

144. (1) Notwithstanding anything contained in sections 62 to 69 of the Code of Criminal Procedure, 1973, a Magistrate issuing a summons to a witness may direct a copy of summons to be served at the place where such witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

2 of 1974.

(2) Where an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by any person authorised by the postal department or the courier services that the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

Evidence on
affidavit.

145. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

2 of 1974.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

146. The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

Bank's slip
prima facie
evidence of
certain facts.

2 of 1974.

147. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be compoundable."

Offences to be
compoundable.

STATEMENT OF OBJECTS AND REASONS

The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encouraging the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, namely sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

2. A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act, 1881 in various courts in the country. Keeping in view the large number of complaints under the said Act pending in various courts, a Working Group was constituted to review section 138 of the Negotiable Instruments Act, 1881 and make recommendations as to what changes were needed to effectively achieve the purpose of that section.

3. The recommendations of the Working Group along with other representations from various institutions and organisations were examined by the Government in consultation with the Reserve Bank of India and other legal experts, it has been decided to bring out, *inter alia*, the following amendments in the Negotiable Instruments Act, 1881, namely:—

(i) increasing the punishment as prescribed under the Act from one year to two years;

(ii) increasing the period for issue of notice by the payee to the drawer from 15 days to 30 days;

(iii) to provide discretion to the court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;

(iv) to prescribe procedure for dispensing with preliminary evidence of the complainant;

(v) to prescribe procedure for servicing of summons by the Court through speed post or empanelled private couriers;

(vi) to provide for summary trial of the cases under the Act with a view to speeding up disposal of cases; and

(vii) make the offences under the Act compoundable.

4. The amendments in the Act are expected to result in early disposal of cases relating to dishonour of cheques by the Courts and are also aimed at enhancing punishment for offenders.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 25th April, 2001.

BALASAHEB VIKHE PATIL.

BILL NO. 36 OF 2001

A Bill to provide for the ownership of an individual apartment in a building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto.

WHEREAS with a view to securing that the ownership and control of the material resources of the community are so distributed as to sub-serve the common good, it is expedient to provide for the ownership of an individual apartment in a building and of an undivided interest in the common areas and facilities appurtenant to such apartment, and to make such apartment and interest heritable and transferable and for enforcement of obligation on promoters and apartment owners and to provide for matters connected therewith or incidental thereto;

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Delhi Apartment Ownership Act, 2001.
- (2) It extends to the whole of the National Capital Territory of Delhi.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commence-
ment.

Application.

2. The provisions of this Act shall apply to every apartment in a building which was constructed or converted into apartments by a promoter before or after the commencement of this Act and on a free hold land, or a lease hold land, if the lease for such land is for a period of thirty years or more.

Provided that, where a building constructed, whether before or after the commencement of this Act, on any land contains only two or three apartments, the owner of such building may, by a declaration duly executed and registered under the provisions of the Registration Act, 1908, indicate his intention to make the provisions of this Act applicable to such building, and on such declaration being made, such owner shall execute and register a Deed of Apartment in accordance with the provisions of this Act, as if such owner were the promoter in relation to such building.

16 of 1908.

Definitions.

3. In this Act, unless the context otherwise requires,—

(a) "allottee", in relation to an apartment, means the person to whom such apartment has been allotted, sold or otherwise transferred by the promoter;

(b) "apartment" means a part of any property, intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors or any part or parts thereof, in a building to be used for residence or office or for the practice of any profession, or for carrying on of any occupation, trade or business or for such other type of independent use as may be prescribed, and with a direct exit to a public street, road or highway, or to a common area leading to such street, road or highway, and includes any garage or room (whether or not adjacent to the building in which such apartment is located) provided by the promoter for use by the owner of such apartment for parking any vehicle or, as the case may be, for the residence of any domestic aid employed in such apartment;

(c) "apartment number" means the number, letter or combination thereof, designating an apartment;

(d) "apartment owner" means the person or persons (including a person being a member of a group housing co-operative society) owning an apartment and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment; and shall also include a promoter for such apartment until it is allotted, sold or otherwise transferred;

(e) "Appellate Authority" means the Delhi Apartment Appellate Authority established under section 27;

(f) "Association" means an Association formed under section 14, consisting of all the apartment owners in the building acting as a group in accordance with the bye-laws;

(g) "Bench" means a Bench of the Appellate Authority;

(h) "Board" means the Board of Management of an Association elected by its members under the bye-laws;

(i) "building" means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, pocket or otherwise, each containing two or more apartments, with a total of four or more apartments in all such buildings, and includes a building containing two or three apartments in respect of which a declaration has been made under the proviso to section 2;

(j) "bye-laws" means the bye-laws made under this Act;

(k) "Chairperson" means the Chairperson of the Appellate Authority;

(l) "common areas and facilities", in relation to a building, means all parts of the building or the land on which it is located and all easements, rights and appurtenances belonging to the land or the building, which are neither in the exclusive

possession of an owner in terms of his Deed of Apartment, nor are handed over or intended to be handed over to the local authority or other public service agency;

(m) "common expenses" means—

(i) all sums lawfully assessed against the apartment owners by the Association for meeting the expenses of administration, maintenance, repair or replacement of the common areas and facilities;

(ii) expenses declared as common expenses by the provisions of this Act or bye-laws, or agreed upon by the Association;

(n) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;

(o) "competent authority" means the officer or authority who or which may be authorised by the Central Government, under sub-section (I) of section 25;

(p) "Deed of Apartment" means the Deed of Apartment referred to in section 12;

(q) "Delhi" means the National Capital Territory of Delhi;

(r) "joint family" means a Hindu undivided family, and in the case of other persons, a group or unit, the members of which are by custom, joint in possession of residence;

(s) "limited common areas and facilities" means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments;

(t) "Member" means a member of the Appellate Authority and includes the Chairperson;

(u) "person" includes a company, a firm and a joint family, and also any association of persons, whether incorporated or not;

(v) "prescribed" means prescribed by rules made under this Act;

(w) "promoter" means the authority, person or co-operative society, as the case may be, by which, or by whom any building has been constructed;

(x) "property" means the land, building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

CHAPTER II

OWNERSHIP, HERITABILITY AND TRANSFERABILITY OF APARTMENTS

4. (1) Every person to whom any apartment is allotted, sold or otherwise transferred by the promoter, on or after the commencement of this Act, shall, save as otherwise provided in section 6, and subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him.

Ownership of
apartments

(2) Every person to whom any apartment was allotted, sold or otherwise transferred by the promoter before the commencement of this Act shall, save as otherwise provided under section 6 and subject to the other provisions of this Act, be entitled, on and from such commencement, to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him.

(3) Every person who becomes entitled to the exclusive ownership and possession of an apartment under sub-section (1) or sub-section (2) shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the built-up area of the apartment in relation to the built-up areas of all the apartments in the building:

Provided that in relation to any common area or facility limited for use by certain owners to the exclusion of other owners, the percentage of undivided interest in such common area or facility shall be computed by taking, as a basis, the built-up areas of all such apartments:

Provided further that, in a case where apartments in a building have been allotted for non-residential use, the percentage of non-residential use in relation to such building shall be as may be prescribed.

Explanation.—For the purposes of this sub-section, the actual built-up area shall be taken into account for the calculation of the percentage and any different area which may be stated in the agreement between the promoter and the allottee shall be ignored.

(4) (a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners;

(b) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.

(5) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, and any covenant to the contrary shall be void.

(6) Each apartment owner may use the common areas and facilities in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(7) The necessary work relating to maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto, shall be carried out only in accordance with the provisions of this Act and the bye-laws.

(8) The Association shall have the irrevocable right, to be exercised by the Board, to have access to each apartment from time to time during reasonable hours for the maintenance, repairs or replacement of any of the common areas or facilities therein, or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to any other apartment or apartments.

Apartment to be heritable and transferable.

5. Subject to the provisions of section 6, each apartment, together with the undivided interest in the common areas and facilities appurtenant to such apartment, shall, for all purposes constitute as a heritable and transferable immovable property within the meaning of any law for the time being in force, and accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings, remedy and to penalty, forfeiture or punishment as any other immovable property or make a bequest of the same under the law applicable to the transfer and succession of immovable property.

Ownership of apartment subject to conditions.

6. (1) Where any allotment, sale or other transfer of any apartment has been made, whether before or after the commencement of this Act, in pursuance of any promise of payment, or part payment, of the consideration thereof, the allottee or transferee, as the case may be, shall not become entitled to the ownership and possession of that apartment or to a

percentage of undivided interest in the common areas and facilities appurtenant to such apartment, until full payment has been made of the consideration thereof along with any amount due in respect of common expenses and payment of Government and municipal taxes incurred by the promoter before the formation of the Association together with interest, if any due thereon.

Where any such allottee or transferee has been inducted into the possession of such apartment or any part thereof in pursuance of such allotment or transfer, he shall, until the full payment of the consideration has been made, continue to remain in possession thereof on the same terms and conditions on which he was so inducted into possession of such apartment or part thereof.

(2) In a case where, after full payment under sub-section (1) has been made, any expenses have been incurred by the promoter for providing any common facility in terms of any subsequent requirement of the Government or a local authority, such proportion of the expenses incurred by the promoter shall be payable by the apartment owner, authority or transferee to the promoter as the built-up area of his apartment bears to the built-up area of all the apartments in the building.

7. Each apartment owner shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Deed of Apartment, and failure to comply with any of them shall be a ground for action to recover sums due for damages, or for injunctive relief, or both, by the Board on behalf of the Association, or, in a proper case, by an aggrieved apartment owner.

Compliance with the covenants and bye-laws.

8. (1) Where any land is given on lease by a person (hereafter in this section referred to as the lessor) to another person (hereafter in this section referred to as the lessee, which term shall include a person in whose favour a sub-lease of such land has been granted), and any building has been constructed on such lease-hold land by the lessee or by any other person authorised by him or claiming through him, such lessee shall grant as many sub-leases as there are apartments in such building and shall execute separate deeds of sub-lease in respect of such land in favour of each apartment owner,—

Execution of sub-lease and breach of the terms and conditions of sub-lease.

(a) in the case of a building constructed before the commencement of this Act, within three months from such commencement; or

(b) in the case of a building constructed after the commencement of this Act, within three months from the date on which the possession of any apartment in such building is delivered to him:

Provided that no sub-lease in respect of any land shall be granted except on the same terms and conditions on which the lease in respect of the land has been granted by the lessor and no additional terms and conditions shall be imposed by the lessee except with the previous approval of the lessor.

(2) Where the lessee has any reason to suspect that there has been any breach of the terms and conditions of the sub-lease referred to in sub-section (1), he may himself inspect the land on which the building containing the concerned apartment has been constructed, or may authorise one or more persons to inspect such land and make a report as to whether there had been any breach of the terms and conditions of any sub-lease in respect of such land and, if so, the nature and extent of such breach, and for this purpose, it shall be lawful for the lessee or any person authorised by him to enter into, and to be in, the land in relation to which such breach has been or is suspected to have been committed.

(3) Where the lessee or any person authorised by him makes an inspection of the land referred to in sub-section (1), he shall record in writing his findings on such inspection [a true copy of which shall be furnished to the apartment owner by whom such breach of the terms and conditions of sub-lease in respect of the land appurtenant to the apartment owned by him has been committed (hereinafter referred to as the defaulting apartment owner)] and where such findings indicate that there had been any breach of the terms and conditions of the sub-lease in respect of such land, the lessee may, by a notice in writing, require the defaulting apartment owner to refrain from committing any breach of

the terms and conditions of the sub-lease in respect of such land, or to pay in lieu thereof such composition fees as may be specified in the notice in accordance with such scales of composition fees as may be prescribed.

(4) The defaulting apartment owner who is aggrieved by any notice served on him by the lessee under sub-section (3) may, within thirty days from the date of service of such notice, prefer an appeal to the competent authority either challenging the finding of the lessee or any person authorised by him or disputing the amount of composition fees as specified in the notice, and the competent authority may, after giving the parties a reasonable opportunity of being heard, confirm, alter or reverse those findings or may confirm, reduce or increase the amount of composition fees or set aside the notice.

(5) Where, on the breach of any terms and conditions of any sub-lease in respect of any land, any composition fees become payable, the defaulting apartment owner shall be deemed to have been guilty of such breach and in default of payment thereof it shall be lawful for the lessee to recover the amount of the composition fees from the defaulting apartment owner as an arrear of land revenue.

(6) Where any composition fees are paid whether in pursuance of the notice served under sub-section (3) or in accordance with the decision of the competent authority or the Appellate Authority on appeal, no further action shall be taken by the lessee for the breach of the terms and conditions of the sub-lease in respect of the land in relation to which payment of such composition fees has been made.

(7) Where any lessee omits or fails to take any action either in accordance with the provisions of sub-section (2) or sub-section (3), the lessor may, in the first instance, require the lessee by a notice in writing to take action against the defaulting apartment owner under sub-section (2) or, as the case may be, under sub-section (3), within a period of ninety days from the date of service of such notice, and in the event of the omission or failure of the lessee to do so within such period, the lessor may himself take action as contained in sub-section (2) or sub-section (3), and the provisions of sub-section (4) to (6), shall, as far as may be, apply to any action taken by him as if such action had been taken by the lessee.

(8) For the removal of doubts, it is hereby declared that no work in any apartment by the owner thereof shall be deemed to be a breach of the terms of the sub-lease in respect of the land on which the building containing such apartment has been constructed unless the work is prohibited by section 11.

Purchasers or persons taking lease of apartments from apartment owners to execute an undertaking.

9. Notwithstanding anything contained in the Transfer of Property Act, 1882, or in any other law for the time being in force, any person acquiring any apartment from any apartment owner by gift, exchange, purchase or otherwise, or taking lease of an apartment from an apartment owner shall, —

4 of 1882.

(a) in respect of the said apartment, be subject to the provisions of this Act; and

(b) execute within three months and register an instrument in such form, in such manner and within such period as may be prescribed giving an undertaking to comply with the covenants, conditions and restrictions, subject to which such apartment is owned by the apartment owner aforesaid.

Certain works prohibited.

10. No apartment owner shall do any work which would be prejudicial to the soundness or safety of the property or reduce the value thereof or impair any easement or hereditament or shall add any material structure or excavate any additional basement or cellar without first obtaining the consent of all the other apartment owners.

Explanation.—In this section, reference to other apartment owners shall be construed on or in relation to such apartments only in the building in which the apartment wherein such work, addition or excavation is carried out, is located.

11. (1) The owner of each apartment may create any encumbrance, only against the apartment owned by him and the percentage of the undivided interest in the common areas and facilities appurtenant to such apartment in the same manner and to the same extent as may be created in relation to any other separate parcel of property subject to individual ownership:

Encumbrances
against
apartments.

Provided that where any such encumbrance is created, the apartment in relation to which such encumbrance has been created shall not be partitioned or sub-divided.

4 of 1882.

(2) No labour performed or material furnished with the consent, or at the request, of an apartment owner or his agent or his contractor or sub-contractor, shall be the basis for a charge or any encumbrance under the provisions of the Transfer of Property Act, 1882, against the apartment or property of any other apartment owner not expressly consenting to, or requesting the same, except that such express consent shall be deemed to be given by the other apartment owners in the case of emergency repairs thereto.

(3) The labour performed and material furnished for the common areas and facilities, if duly authorised by the promoter or the Association in accordance with the provisions of this Act, or the bye-laws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for a charge or encumbrance under the Act aforesaid against each of the apartments and shall be subject to the provisions of sub-section (4).

(4) In the event of a charge or any encumbrance against two or more apartments becoming effective, the apartment owners of the separate apartments may remove their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance on payment of the fractional or proportional amounts attributable to each of the apartments affected and on such payment, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free of the charge or encumbrance so removed:

Provided that such partial payment shall not prevent the person having a charge or any of the encumbrances from proceeding to enforce the rights, in relation to the amount not so paid, against any other apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment.

(5) On any such payment, discharge or other satisfaction, referred to in sub-section (4), the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free and clear of the charge or encumbrance, so paid, satisfied or discharged.

CHAPTER III

DEED OF APARTMENT AND ITS REGISTRATION

12. (1) Whenever any allotment, sale or other transfer of any apartment is made by the promoter to the allottee, the promoter shall,—

Contents of
Deed of
Apartment.

(a) in the case of an allotment, sale or other transfer made after the commencement of this Act, within three months from the date of such allotment, sale or other transfer; or

(b) in the case of any allotment, sale or other transfer made before the commencement of this Act, within one year from the date of such commencement,

execute a Deed of Apartment containing the following particulars, namely:—

(i) the name of the allottee;

(ii) description of the land on which the building and the common areas and facilities are located and whether the land is free-hold or lease-hold, and if lease-hold, the period of such lease;

(iii) a set of floor plans of the building showing the lay-out and location, number of apartments and bearing a verified statement of an architect certifying that it is an accurate copy of the portions of the plans of the building as filed with, and approved by, the local authority within the jurisdiction of which the building is located;

(iv) description of the building, stating the number of storeys and basements, the number of apartments in that building and the principal materials of which it is constructed;

(v) the apartment number, or statement of the location of the apartment, its approximate area, number and dimension of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;

(vi) description of the common areas and facilities and the percentage of undivided interest appertaining to the apartment in the common areas and facilities;

(vii) description of the limited common areas and facilities, if any, stating apartments to which their use is reserved;

(viii) value of the property and of each apartment, and a statement of encumbrances, if any, on the apartment and the undivided interest on the date of execution of the Deed of Apartment;

(ix) statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(x) the name of the person to receive service of process, together with the particulars of the residence or place of business of such persons:

Provided that where an apartment has been constructed on a lease-hold land, and the lease-deed in relation thereto is executed after the date of allotment, sale or other transfer in relation to clause (a) or the date of commencement of this Act in relation to clause (b), then, the promoter shall execute the Deed of Apartment within the period of three months of the execution of such lease-deed:

Provided further that the competent authority may, if it is satisfied that the promoter was prevented by sufficient cause from executing the Deed of Apartment in relation to any apartment within the period of three months, or six months, as the case may be, permit the promoter to execute such Deed of Apartment within such further period, not exceeding six months, as it may specify:

Provided also that on removal of the encumbrances referred to in clause (viii) on payment of amount therefor, an endorsement to that effect shall be made on the Deed of Apartment by the person in whose favour encumbrances were created and the apartment owner shall get the endorsement registered in accordance with the provisions of section 13.

(2) The promoter shall—

(a) file in the office of the competent authority; and

(b) deliver to the concerned allottee or transferee, as the case may be, a certified copy of each Deed of Apartment as registered under section 13.

(3) Whenever any transfer of any apartment is made by the owner thereof, whether by sale, lease, mortgage, exchange, gift or otherwise, the transferor shall deliver to the transferee the certified copy of the Deed of Apartment delivered to him under sub-section (2) after making an endorsement thereon as to the name, address and other particulars of the transferee, to enable the transferee to get the endorsement on the certified copy of the Deed of Apartment registered in accordance with the provision of section 13.

(4) If—

(a) the promoter fails to execute a sub-lease under sub-section (1) of section 8 or Deed of Apartment under sub-section (1) of section 12 within the period provided in those sub-sections or does not comply with the provisions of sub-section (2) within a period of three months of registration of the Deed of Apartment under section 13,

(b) the apartment owner does not comply with the provisions of sub-section (3) within a period of three months of transfer of an apartment by such owner,

the competent authority shall impose a penalty to the extent of rupees five thousand or five per cent. of the price of the apartment, whichever is higher, and shall impose an additional penalty of rupees one hundred for each day commencing with the first day of default and the penalties so imposed shall be recoverable as arrears of land revenue.

(5) Notwithstanding imposition of any penalty under sub-section (4), an apartment owner, allottee or transferee, as the case may be, may make an application to the competent authority in the prescribed form and manner giving the details of the apartment in relation to which execution of sub-lease under sub-section (1) of section 8, execution of Deed of Apartment under sub-section (1) of this section or delivery of Deed of Apartment after endorsement under sub-section (3) of this section has not been done and the competent authority shall, after giving a reasonable opportunity of being heard to the lessee, promoter or the transferor, as the case may be, pass such orders as he deems proper including an order for registration and delivery of a document evidencing the execution of sub-lease, Deed of Apartment or Deed of Apartment after endorsement in the prescribed form in a manner shall send a true copy of such sub-lease, Deed of Apartment or Deed of Apartment after endorsement to the concerned Registrar for registration thereof in accordance with the provisions of section 13.

(6) Whenever any succession takes place to any apartment or part thereof, the successor shall, within a period of six months from the date of such succession, make an application to the competent authority for recording such succession on the certified copy of the Deed of Apartment in relation to the concerned apartment, and, if there is any dispute as to the succession to the apartment, the competent authority shall decide the same, and for this purpose, such authority shall have the powers of a civil court, while trying a suit, and its decision shall have effect of a decree.

(7) Whenever any succession to an apartment has been recorded by the competent authority under sub-section (6), such authority shall send a true copy of such record, to the concerned Registrar for registration thereof in accordance with the provisions of section 13.

(8) For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of, the provisions of any other law, for the time being in force, relating to the transfer of immovable property.

16 of 1908. 13. (1) Every Deed of Apartment and every endorsement thereon relating to the transfer of the apartment shall be deemed to be a document which is compulsorily registrable under the Registration Act, 1908 and shall be registered with the Registrar accordingly, and the words and expressions used in this section but not defined in this Act, shall have the meanings respectively assigned to them in the Registration Act, 1908.

Registration of
Deed of
Apartment.

(2) In all registration offices, a book called "Register of Deeds of Apartments" and an index relating thereto shall be kept in such form and shall contain such particulars as may be prescribed.

(3) Whenever any endorsement on a Deed of Apartment is registered, the concerned Registrar shall forward a certified copy thereof to the competent authority to enable that authority to make necessary entries in the certified copy of the concerned Deed of Apartment filed with it under sub-section (2) of section 12.

(4) Any person acquiring any apartment shall be deemed to have notice of the contents of the Deed of Apartment and the endorsement, if any, thereon as from the date of its registration under this section.

CHAPTER IV

ASSOCIATION OF APARTMENT OWNERS AND BYE-LAWS FOR THE REGULATION OF THE AFFAIRS OF SUCH ASSOCIATION

Association of
apartment
owners and
bye-laws
relating
thereto.

14. (1) There shall be an Association of apartment owners for the administration of the affairs in relation to the apartments and the property appertaining thereto and for the management of common areas and facilities:

Provided that where any area has been demarcated for the construction of a building, whether such area is called a block or pocket or by any other name, there shall be a single Association in such demarcated area.

(2) Every promoter shall make an application in the prescribed manner to the competent authority for the registration of the Association with persons who have been allotted, sold or otherwise transferred apartments as members,—

(a) in case such apartments were allotted, sold or otherwise transferred before the commencement of this Act and more than one-third of such apartments were allotted, sold or otherwise transferred before such commencement, within three months of such commencement;

(b) in any other case within three months after more than one-third of the apartments were allotted, sold or otherwise transferred.

(3) The promoter shall be the associate member in relation to an apartment not allotted, sold or otherwise transferred till such apartment is allotted, sold or otherwise transferred to a person who shall become a member of the Association on such allotment, sale or transfer without any further action on his part:

Provided that the registration of any Association shall be without prejudice to any action that may be taken against the promoter for violation of any provision of law in relation to erection of buildings.

(4) The competent authority after satisfying itself that the proposed Association meets the requirements of the provisions of this Act and the Delhi Co-operative Societies Act, 1972 shall register such Association as a co-operative society under the Delhi Co-operative Societies Act, 1972: 35 of 1972.

Provided that nothing contained in section 5 of the Delhi Co-operative Societies Act, 1972 as to the minimum number of persons in a society shall apply in relation to an Association. 35 of 1972.

(5) The competent authority shall exercise all the powers and perform functions of the Registrar under the Delhi Co-operative Societies Act, 1972 in relation to the Association registered under that Act as if he has been appointed as the Registrar under the Act. 35 of 1972.

(6) In a case where a promoter, being a co-operative society registered under the Delhi Co-operative Societies Act, 1972, has filed an application under sub-section (2), the competent authority shall, after satisfying itself that the proposed Association meets the requirement of the provision of this Act, shall pass an order that such co-operative society shall be an Association for the purposes of this Act. 35 of 1972.

(7) The Association shall, at its first meeting, make its bye-laws in accordance with the model bye-laws prescribed under this Act and no departure from, variation of, addition to or omission from, the model bye-laws shall be made, except with the prior approval of the competent authority and no such approval shall be given if, in the opinion of the competent authority, such departure, variation, addition or omission shall have the effect of altering the basic structure of model bye-laws.

(8) The model bye-laws framed under sub-section (7) shall provide for the following, among other matters, namely:—

(a) the manner in which the Association is to be formed;

- (b) the election, from among apartment owners, of a Board of Management by the members of the Association;
- (c) the number of apartment owners constituting the Board, the composition of the Board and that one-third of members of the Board shall retire annually;
- (d) the powers and duties of the Board;
- (e) the honorarium, if any, of the members of the Board;
- (f) the method of removal from office of the members of the Board;
- (g) the powers of the Board to engage the services of a Manager;
- (h) method of calling meetings of the Association and the number of members of such Association who shall constitute a quorum for such meetings;
- (i) election of a President of the Association from among the apartment owners, who shall preside over the meetings of the Board and of the Association;
- (j) election of a Secretary to the Association from among the apartment owners, who shall be an *ex officio* member of the Board and shall keep two separate minutes books, one for the Association and the other for the Board, pages of each of which shall be consecutively numbered and authenticated by the President of the Association, and shall record, in the respective minutes books, the resolutions adopted by the Association or the Board, as the case may be;
- (k) election of a Treasurer from among the apartment owners, who shall keep the financial records of the Association as also of the Board;
- (l) maintenance, repair and replacement of the common areas and facilities and payment therefor;
- (m) manner of collecting from the apartment owners or any other occupant of apartments, share of the common expenses;
- (n) engagement and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities;
- (o) restrictions with regard to the use and maintenance of the apartments and the use of the common areas and facilities, as may be necessary to prevent unreasonable interference in the use of each apartment and of the common areas and facilities by the several apartment owners;
- (p) any matter which may be required by the Central Government to be provided for in the bye-laws for the proper or better administration of the property;
- (q) such other matters as are required to be, or may be, provided for in the bye-laws.
- (9) The bye-laws framed under sub-section (7) may also contain provisions, not inconsistent with this Act,—
- (a) enabling the Board to retain certain areas of the building for commercial purposes and to grant lease of the areas so retained, and to apply the proceeds of such lease for the reduction of the common expenses for maintaining the building, common areas and facilities, and if any surplus is left after meeting such expenses, to distribute such surplus to the apartment owners as income;
- (b) relating to the audit of the accounts of the Association and of the Board, and of the administration of the property;
- (c) specifying the time at which and the manner in which annual general meetings and special general meetings of the Association shall be held and conducted;

(d) specifying the time at which and the manner in which, the annual report relating to the activities of the Association of Apartment Owners shall be submitted;

(e) specifying the manner in which and the income derived and expenditure incurred by the Association shall be dealt with, or as the case may be, accounted for.

(10) Bye-laws framed under sub-section (1) shall be in addition to and not in derogation of the provisions of the Delhi Co-operative Societies Act, 1972.

35 of 1972.

(11) Notwithstanding grant of a sub-lease under sub-section (1) of section 8 or execution of a Deed of Apartment under sub-section (1) of section 12, the Association shall exercise all the powers and perform functions under bye-laws framed by it.

Insurance.

15. (1) The Board shall—

(a) if requested so to do by a mortgagee having a first mortgage covering an apartment, have the authority to; and

(b) if required so to do by the bye-laws or by a majority of the apartment owners, obtain insurance for the property against loss or damage by fire or other hazards under such terms and for such amounts as shall be so requested or required.

(2) Such insurance coverage shall be written on the Deed of Apartment in the name of such Board as trustee for each of the apartment owners in the percentages specified in the bye-laws.

(3) The premia payable in respect of every such insurance shall be common expenses.

(4) The provisions of sub-sections (1) to (3) shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

Disposition of property, destruction or damage.

16. If within sixty days of the date of damage to or destruction of all, or part of any property, or within such further time as the competent authority may, having regard to the circumstances of the case, allow, the Association does not proceed to repair, reconstruct or re-build such property, then, and in that event,—

(a) the property shall be deemed to be owned in common by the apartment owners;

(b) the undivided interest in the property owned in common, which shall appertain to each apartment owner, shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities;

(c) any incumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property;

(d) the property shall be subject to an action for partition at the suit of any apartment owner in which event, the net proceeds of sale together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided amongst all the apartment owners in the percentage equal to the percentage of undivided interest owned by each apartment owner in the property after paying out, all the respective shares of the apartment owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

Action.

17. (1) Without prejudice to the rights of any apartment owner, action may be brought by the Board or Manager, in either case, in the discretion of the Board on behalf of two or more of the apartment owners as their respective interests may appear to involve, with respect to any cause of action relating to the common areas and facilities or more than one apartment.

(2) The service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person, designated in the bye-laws to receive service of process.

CHAPTER V

COMMON PROFITS, COMMON EXPENSES AND OTHER MATTERS

18. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use of enjoyment of any of the common areas and facilities, or by the abandonment of his apartment.

Apartment owner not to be exempt from liability for contribution by waiver of the user of the common areas and facilities

19. (1) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest of the apartment owners in the common areas and facilities.

Common profits, common expenses and other matters.

(2) Where the apartment owner is not himself in the occupation of the apartment owned by him, the common expenses payable by such apartment owner shall be recoverable from the person in the occupation of the apartment.

(3) Interest on the arrears, including on common expenses, shall be recoverable at the percentage as prescribed.

20. Every promoter shall render an account to the Association for the amounts collected by him, from the apartment owners before the formation of the Association, towards common expenses, sinking fund for replacement of fixed assets and payment of Government or municipal taxes and shall transfer the balance, if any, with him to the Association within three months of the formation of the Association.

Promoter to render account to the Association.

21. All sums assessed by the Association, but unpaid for the share of the common expenses chargeable to any apartment, shall constitute a charge on such apartment prior to all other charges after exhausting the following charges, namely:—

Common expenses to be a charge on the apartment.

(i) the charge, if any, on the apartment for payment of Government and municipal taxes; and

(ii) all the sums unpaid on a first mortgage of the apartment;

(iii) arrears of ground rent and other charges relatable thereto and payable to lessor.

22. (1) Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment (including an apartment in respect of which the provisions of this Act were applied under the proviso to section 2, shall be deemed to be separate property for the purpose of assessment of tax on lands and buildings leviable under such law and shall be assessed and taxed accordingly; and for this purpose a local authority shall make suitable regulations to carry out the provisions of this section.

Separate assessments.

(2) Neither the building nor the property nor the common areas and facilities referred to in sub-section (1) shall be deemed to be separate properties for the purpose of the levy of such taxes.

(3) Every Association shall collect tax imposed by the Government or by a local authority from the apartment owners and shall remit the same to such authority within the period and in the manner as may be prescribed.

(4) Any amount payable towards any tax imposed by the Government or a local authority shall be recoverable as an arrear of land revenue from the Association or the apartment owners jointly or severally.

Supersession
of Board.

23. (1) If, in the opinion of the competent authority, the Board of any Association persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interest of the Association, or its members, the competent authority may, after giving the Board an opportunity to state its objections, if any, by order in writing, remove the Board and appoint one or more administrators who need not be members of the Association to manage the affairs of the Association for a period not exceeding six months specified in orders, which period may, at the discretion of the competent authority, be extended from time to time; so, however, that the aggregate period does not exceed three years.

(2) The competent authority may fix any remuneration for the administrator, as he may think fit and such remuneration shall be paid out of the funds of the Association.

(3) The administrator shall, subject to the control of the competent authority and such instructions as he may from time to time give, have power to exercise all or any of the functions of the Board or of any officer of the Association and take all such actions as may be required in the interest of the Association.

(4) The administrator shall, at the expiry of the term of his office, arrange for the constitution of a new Board in accordance with the bye-laws of the Association.

(5) Before taking any action under sub-section (1) in respect of an Association, the competent authority shall consult the financing institution to which it is indebted.

Joint and
several
liability of
vendor, etc.,
for unpaid
common
expenses.

24. (1) Upon the sale, bequest or other transfer of an apartment, the purchaser of the apartment or the grantee or legatee or the transferee, as the case may be, shall be jointly and severally liable with the vendor or the transferor for all unpaid assessments against the vendor or transferor for his share of the common expenses up to the time of the sale, bequest or other transfer, without prejudice to the right of the purchaser, grantee, legatee, or transferee to recover from the vendor or the transferor any amount paid by the purchaser, grantee, legatee or transferee therefor.

(2) Any purchaser, grantee, legatee or transferee referred to in sub-section (1) shall be entitled to a statement from the Board setting forth the amount of the unpaid assessment against the vendor or transferor, as the case may be, and such purchaser, grantee, legatee or transferee shall not be liable for, nor shall the apartment be sold subject to a charge for any unpaid share of common expenses against such apartment accrued prior to such sale, bequest or other transfer, in excess of the amount set forth in the statement.

CHAPTER VI

THE AUTHORITIES UNDER THE ACT

Functions of
the competent
authority.

25. (1) The Central Government shall, by notification in the official Gazette, authorise any officer or authority to perform all or any of the functions of the competent authority under this Act.

(2) The competent authority may, on application made to it,—

(a) approve, under sub-section (3) of section 4, the percentage of undivided interest in the common areas and facilities by each apartment owner;

(b) decide under section 7, action for recovery of sums due for damages or grant injunctive relief, or both;

(c) permit, under second proviso to sub-section (1) of section 12 further time to the promoter to execute Deed of Apartment;

(d) receive, under sub-section (2) of section 12, the certified copies of the Deed of Apartment and all endorsement;

(e) to impose penalty under sub-section (4) of section 12;

(f) to hear and dispose of an application under sub-section (5) of section 12;

(g) record succession to any apartment on the certified copy of the Deed of Apartment and to decide any dispute relating therewith under sub-section (6), and to send true copy of such Deed of Apartment to the concerned Registrar for registration under sub-section (7), of section 12;

- (h) register, under sub-section (4) of section 14, the Association of apartment owners;
- (i) grant approval in matter of bye-laws under sub-section (7) of section 14;
- (j) allow, under section 16, further time beyond sixty days to any Association to repair, reconstruct or re-build a property which is damaged or destroyed;
- 35 of 1972. (3) Notwithstanding the powers and functions of the Registrar under the Delhi Cooperative Societies Act, 1972 vested in him under sub-section (5) of section 14,—
- (a) ensure compliance by promoters Associations and apartment owners of the provisions of this Act, rules or bye-laws made thereunder by issue of suitable directions;
- (b) issue directions to Associations and apartment owners consistent with the provisions of the Act, rules and bye-laws made thereunder;
- (c) perform any other functions which are provided to it under this Act, or which the Central Government may, by notification in the Official Gazette, entrust to the competent authority.
- (4) Decide appeals made to it under sub-section (4) of section 8 against notice given by the lessee to an apartment owner regarding a breach of terms and conditions of the sub-lease or regarding the amount of the composition fee demand in view thereof.
- 5 of 1908. 26. The competent authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—
- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) issuing commissions for the examination of witnesses;
- (d) any other matter which may be prescribed,
- 45 of 1860. and any proceeding before the competent authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code, and the competent authority shall be deemed to be a civil court for the purpose of section 195 but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973.
- 2 of 1974
27. The Central Government shall, by notification in the Official Gazette, establish an Appellate Authority to be known as the Delhi Apartment Appellate Authority to exercise the jurisdiction, powers and authority conferred on it by or under this Act.
28. (1) The Appellate Authority shall consist of a Chairperson and such number of other Members, as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Authority, may be exercised by a bench thereof.
- (2) Subject to the other provisions of this Act, a Bench shall consist of one or more Members constituted by the Chairperson and shall sit at such place in the National Capital Territory of Delhi as the Central Government may, by notification in the Official Gazette, specify.
29. (1) A person shall not be qualified for appointment as a Chairperson, unless that person—
- (a) is, has been, or is qualified to be, a Judge of a High Court, or
- (b) has, for at least two years, held the office of a Member.

Powers of
competent
authority.

Establishment
of Appellate
Authority.

Composition
of an Appellate
Authority.

Qualification
for appoint-
ment as
Chairperson
and Members.

(2) A person shall not be qualified for appointment as a Member unless that person—

(a) is, or has been, a Member of the Indian Legal Service and held the post under Grade I of that service for at least three years; or

(b) has, for at least three years, held the post of a Joint Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and shall have adequate experience of dealing with matters relating to urban development, municipal administration or housing.

(3) Subject to the provisions of sub-section (4), the Chairperson and every other Member shall be appointed by the President of India.

(4) No appointment of a person as the Chairperson shall be made except after consultation with the Chief Justice of India.

Term of office
of Chairperson
and
Members.

30. The Chairperson or other Member shall hold office for a term of five years from the date of entering the office or until attaining—

(a) in the case of Chairperson, the age of sixty-five years, and

(b) in the case of a Member, the age of sixty-two years,

whichever is earlier.

Senior-most
Member to act
as Chairperson
or discharge
the functions
of chairperson
in certain
circumstances.

31. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of death, resignation or otherwise of the Chairperson, the senior-most Member shall act as Chairperson until the date on which the new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon the office.

(2) When the Chairperson is unable to discharge the functions of Chairperson owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date of resuming the duty by Chairperson.

Salaries,
allowances
and other
terms and
conditions of
service of
Chairperson
and Members.

32. The salaries and allowances payable to, and other terms and conditions of service (including pensions, gratuity and other retirement benefits) of the Chairperson and other Members shall be such as may be prescribed.

Resignation
and removal.

33. (1) The Chairperson or any other Member may, by notice in writing under hand addressed to the President of India, resign from the office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the President of India to relinquish the office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as the successor enters upon the office or until the expiry of his term of office, whichever is earlier.

(2) The Chairperson or any other Member shall not be removed from the office except by an order made by the President of India on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairperson or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the Chairperson or other Member referred to in sub-section (2).

34. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Authority in the discharge of its functions and provide the Appellate Authority with such officers and other employees as it may think fit.

Staff of
Appellate
Authority

(2) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Authority shall be such as may be prescribed.

(3) The officers and other employees of the Appellate Authority shall discharge their functions under the general superintendence of the Chairperson in the manner as may be prescribed.

35 of 1972

35. (1) Notwithstanding anything contained in the Delhi Co-operative Societies Act, 1972, any person aggrieved by an order or decision of the competent authority under this Act, or rules made thereunder, may prefer an appeal to the Appellate Authority within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

Appeals to
Appellate
Authority.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Authority that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal to the Appellate Authority shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and by such fees as may be prescribed.

5 of 1908.

36. (1) The Appellate Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by principles of natural justice and subject to such provisions of this Act and the rules made thereunder, the Appellate Authority shall have powers to regulate its own procedure including the fixing of places and times of its hearing.

Procedure and
powers of
Appellate
Authority.

5 of 1908

(2) The Appellate Authority shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (a) receiving evidence;
- (b) issuing commissions for examination of witnesses;
- (c) requisitioning any public record; and
- (d) any other matter which may be prescribed.

45 of 1860.

2 of 1974.

(3) Any proceeding before the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code, and the Appellate Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

37. On and from the appointed day, no court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section (1) of section 25.

Bar of
jurisdiction of
courts, etc

38. On ceasing to hold office, the Chairperson or other Member shall not appear before the Appellate Authority or the competent authority.

Bar to appear
before
Appellate
Authority.

Conditions as to making of interim orders.

39. Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in any proceedings relating to, an appeal unless—

(a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter.

Power of Chairperson to transfer case from one Bench to another.
Execution of orders of Appellate Authority and the competent authority.

40. On the application of any of the parties and after notice to the parties, and after hearing such of them as the Chairperson may desire to be heard or on his own motion without fresh notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

41. An order made by the competent authority or the Appellate Authority under this Act shall be executable by the competent authority as a decree of a civil court and for this purpose, the competent authority shall have all the powers of a civil court.

CHAPTER VII

MISCELLANEOUS

Act to be binding on apartment owners, tenants, etc.

42. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any contract, undertaking or other instrument and all apartment owners, tenants of owners, employees of owners and tenants, or any other person who may, in any manner, use the property or any part thereof to which this Act applies, shall be subject to the provisions of this Act and the bye-laws and the rules made thereunder:

Provided that nothing contained in this sub-section shall affect the right, title or interest acquired by any allottee or other person in common areas and facilities from any promoter on or before the 28th day of February, 1986.

(2) All agreements, divisions and determinations lawfully made by the Association in accordance with the provisions of this Act and the bye-laws shall be deemed to be binding on all apartment owners.

Penalty for breach of the provisions of the Act.

43. (1) If a promoter or any association or an apartment owner contravenes any provision of this Act or the rules made thereunder, or commits the breach of any bye-law of the association or of the terms and conditions of the Deed of Apartment, or does anything detrimental to the health or safety of the public, the competent authority may issue, either *suo moto* or on an application from any person affected, a notice to such promoter or association or an apartment owner to show cause why penalty should not be levied, if no sufficient cause is shown, levy for each breach or contravention, a penalty for each apartment upon a maximum of one per cent. of the price of the apartment or one thousand rupees, whichever is greater, and a further minimum penalty for each apartment of one hundred rupees for each day till the breach or contravention continues.

(2) The penalty under sub-section (1) may be recovered as an arrear of land revenue in case a promoter or an association or an apartment owner on which such penalty is imposed fails to pay such penalty within a time, as determined by the competent authority, not exceeding fifteen days.

Protection of action taken in good faith.

44. No suit, prosecution or other legal proceeding shall lie against the Chairperson, other Member of the Appellate Authority or a person holding the post of competent authority or any other person authorised by the Chairperson, other Member or competent authority for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

45 of 1860.

45. The Chairperson, other Members, officers and other employees of the Appellate Authority, the competent authority and the officers and other employees working under the competent authority shall be deemed to be public servant within the meaning of section 21 of Indian Penal Code.

Members and staff of Appellate Authority, competent authority and its staff to be public servants.

46. (1) The Central Government may, by notification in the Official Gazette, reduce or remit, whether prospectively or retrospectively from a date not earlier than the date of commencement of this Act,—

Power to exempt stamp duty, registration fee and court fees and power to refund

(a) the stamp duty with which, under any law relating to stamp duty for the time being in force, instruments or documents executed by or on behalf of a promoter, apartment owner or Association relating to any of the purposes of this Act are respectively chargeable;

(b) any fee payable by or on behalf of any promoter, apartment owner or Association in relation to instruments or documents referred to in clause (a) under any law relating to registration of documents or to court fees, for the time being in force,

and which the Central Government is competent to levy.

(2) The Central Government may refund the amount of any duty or fee paid in pursuance of any law referred to in sub-section (1) in such circumstances, to such extent and subject to such terms and conditions, if any, as that Government may, by order, determine.

4 of 1882

47. For the removal of doubts, it is hereby declared that the provisions of the Transfer of the Property Act, 1882 shall, in so far as they are not inconsistent with the provisions of this Act, apply to the transfer of any apartment, together with its undivided interest in the common areas and facilities appurtenant thereto, made by the owner of such apartment, whether such transfer is made by sale, lease, mortgage, exchange, gift or otherwise, as they apply to the transfer of any immovable property.

Removal of doubts

48. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to make rules

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the type of independent uses, other than the uses specified in clause (b) of section 3, which may be made of an apartment;

(b) the percentage of non-residential use in a building under the second proviso to sub-section (3) of section 4;

(c) the scales of composition fees which may be paid under sub-section (3) of section 8 for the breach of the terms and conditions of any lease or sub-lease;

(d) the form and manner in which, and the period within which, an instrument referred to in clause (b) of section 9, shall be executed and registered;

(e) the form and manner of applications to the competent authority and the form and manner of endorsement under sub-section (5) of section 12;

(f) the form in which the Register of Deeds of Apartments under the Delhi Apartment Ownership Act, 2001 and the index relating thereto shall be kept and the particulars which such Register shall contain as required by sub-section (2) of section 13;

(g) the manner of making application by the promoter for registration of the Association under sub-section (2) of section 14;

- (h) the model bye-laws under sub-section (7) of section 14;
- (i) the percentage on and the manner in which interest under section 19 shall be recoverable;
- (j) the period and manner of remitting taxes collected by the Association under sub-section (3) of section 22;
- (k) the power of civil court which may be vested in the competent authority under clause (a) of section 26;
- (l) the salaries and allowances payable and other terms and conditions of service of the Chairperson and other Members under section 32;
- (m) the procedure for investigation of misbehaviour or incapacity of the Chairperson and other Members under sub-section (3) of section 33;
- (n) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Authority under sub-section (2) and the manner in which the officers and other employees of the Appellate Authority shall discharge their functions under sub-section (3) of section 34;
- (o) the form of making an appeal, the manner of verification and the fee payable under sub-section (3) of section 35;
- (p) the powers of civil court which may be vested in the Appellate Authority under clause (d) of sub-section (2) of section 36;
- (q) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The Delhi Apartment Ownership Act, 1986 came into force from the 1st day of December, 1987. The main objectives of the Act were to provide for heritable and transferable ownership rights to every apartment owner and to provide for an association of apartment owners for the maintenance of common areas and facilities in which an apartment owner had a percentage of undivided interest.

2. The said Act could not elicit favourable response from lease administering agencies, promoters and apartment-owners in apartment buildings. Apartment owners made representations about the provisions of the Act. The Delhi Administration and Delhi Development Authority expressed the view that some expressions should be defined and penal provisions should be made for non-compliance of various provisions of the Act. They also desired that provisions should be made for housing finance by mortgage of title, or other available means. It was, therefore, felt that the Delhi Apartment Ownership Act should be reviewed further.

3. The National Housing Policy, 1994 envisaged enactment of an Apartment Ownership Legislation. A Model legislation was formulated by the Government and sent to the State Governments for adoption with such modifications as may be required for local conditions. The present Delhi Apartment Ownership Bill is also based on that model.

4. The present Bill, *inter alia*, provides for the following:—

- (i) the application of the enactment applicable to every apartment in any building having four or more apartments;
- (ii) determination of share of the apartment owner in the undivided common interest on the ratio of the built up area of the apartment to that of the total built up area of the building with similar provision in the case of limited common areas;
- (iii) transfer of ownership and possession on full payment of construction cost along with any amounts due in respect of common expenses and payment of Government and municipal taxes payable or incurred by the promoters;
- (iv) recovery from the owner of the expenses incurred by the promoter for providing any common facility in terms of any requirement of the Government or local body on *pro rata* basis;
- (v) supplying of the apartment deed in respect of each apartment, including undivided interest in common area and facilities, by a promoter to each apartment owner;
- (vi) execution of sub-lease in favour of an apartment owner where the land is held on lease hold basis;
- (vii) registration of the Association of apartment owners;
- (viii) supersession of the Board of an Association in certain circumstances and appointment of an administrator;
- (ix) penalising the promoter, apartment owner or an association for contravention of any provision of the Act or the rules made thereunder or for non-execution of sub-lease or deed of apartment;
- (x) empowering the Central Government to authorise any officer or authority to perform all or any of the functions of the competent authority;
- (xi) establishing an Appellate Authority for hearing appeals; and
- (xii) barring the jurisdiction of civil courts.

5. The proposed legislation envisages a comprehensive framework for management of multi-apartment buildings to secure the title and rights of apartment owners with simple procedure of transfer and registration of titles. The management of common services and facilities would also become more effective and the legislation would facilitate proper enforcement of obligations of promoters and apartment owners.

The Bill seeks to achieve the aforesaid objects.

NEW DELHI;
The 7th March, 2001.

JAG MOHAN.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. M. 11012/1/96-H.II/UCU (Vol. II)-1501/F, dated the 17th April, 2001 from Shri Jagmohan, Minister of Urban Development and Poverty Alleviation to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Delhi Apartment Ownership Bill, 2001, recommends the introduction of the Bill in Lok Sabha under article 117(1) of the Constitution.

Notes on Clauses

Clause 2 provides for the applicability of the provisions of the Bill to every apartment in a building in the National Capital Territory of Delhi having four or more apartments. Where a building has two or three apartments, the owner of such building would have option with regard to applicability of these provisions.

Clause 3 defines certain terms and expression used in the Bill.

Clause 4 provides for ownership of an apartment, the percentage of undivided interest of each apartment owner in the common areas and facilities on the basis of built-up area of the apartment in a building.

Clause 5 provides that each apartment shall be a heritable and transferable immovable property.

Clause 6 provides that ownership of an apartment shall be subject to the payment of full consideration along with the amount due in respect of common services and facilities, Government and municipal taxes.

Clause 7 provides that each apartment owner shall comply strictly with the bye-laws, covenants, conditions and restrictions set forth in the Deed of Apartment.

Clause 8 provides that where a sub-lessee makes any breach of the terms and conditions of sub-lease, the lessee shall be entitled to recover compositions fees from the defaulting apartment owner.

Clause 9 provides that where an apartment is acquired, the person acquiring such apartment shall give an undertaking to comply with the provisions of the enactment.

Clause 10 provides for prohibition of certain works which may be either prejudicial to the soundness or safety of the property or reduce the value thereof.

Clause 11 provides that an apartment owner may create any encumbrance against the apartment owned by him and the *pro rata* percentage of the undivided interest in the common areas and facilities.

Clause 12 provides the details of contents which a Deed of Apartment may contain.

Clause 13 provides for compulsory registration of Deed of Apartment.

Clause 14 provides for the procedure for formation of Association of apartment owners. It also provides that each Association shall frame bye-laws for regulation of its affairs.

Clause 15 provides for the insurance of an apartment.

Clause 16 provides that within a specified date of damage to or destruction of any part of any property, the Association shall proceed to repair, re-construct or re-build such property failing which the property shall be deemed to be owned in common by the apartment owners.

Clause 17 provides that the Board or manager of the Association may take action on behalf of apartment owners relating to common areas and facilities.

Clause 18 provides that no apartment owner can be exempted from liability to contribute towards the common expenses.

Clause 19 provides that common profits of the property shall be distributed among and the common expenses shall be charged to the apartment owners as per the percentage of undivided interest.

Clause 20 provides that a promoter shall render to the Association an account of amounts collected towards common expenses.

Clause 21 provides that common expenses shall be a charge on the apartments.

Clause 22 provides that each apartment and its percentage of undivided interest in the common areas and facilities shall be deemed to be separate property for the purpose of assessment of tax on land and buildings.

Clause 23 provides the procedure for supersession of the Board of Association of apartment owners.

Clause 24 describes the joint and several liability of the vendor for unpaid common expenses.

Clauses 25 and 26 provide for functions and powers of the competent authority.

Clauses 27 to 33 provide for establishment of Appellate Authority, its composition, qualifications for appointment of Chairperson and Member, their term of office, salaries, allowances, resignation and removal and other terms and conditions.

Clause 34 provides for the staff of the Appellate Authority.

Clause 35 provides for an appeal to the Appellate Authority against an order or decision of the competent authority.

Clause 36 describes the powers to be exercised and the procedure to be followed by the Appellate Authority.

Clause 37 bars the jurisdiction of civil courts or other authority in respect of matters mentioned in the Bill.

Clause 38 prohibits the Chairperson and Members from appearance before the Appellate Authority or the competent authority after they cease to hold the office.

Clauses 39 to 41 describe the conditions for making interim orders and powers to transfer a case from one bench to another.

Clause 42 provides that the provisions of the Bill after enactment shall be binding on each apartment owner, his tenants and employees.

Clause 43 specifies the penalties for breach of the provisions of the Bill after enactment.

Clause 44 provides for protection of action taken in good faith in pursuance of the provisions of the Act and the rules framed thereunder.

Clause 45 provides that Members and staff of the Appellate Authority, the competent authority and its staff shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 46 empowers the Central Government to provide exemption in respect of stamp duty, registration fee, court fee or any other duty.

Clause 47 empowers the Central Government to remove difficulties in giving effect to the provisions of the Bill after enactment.

Clause 48 confers powers on the Central Government to make rules.

Clause 49 provides for repealing the Delhi Apartment Ownership Act, 1986.

FINANCIAL MEMORANDUM

The Central Government proposes to establish an Appellate Authority under clause 27 of the Bill. The Authority shall consist of the Chairperson and other members and such other officers and employees, who are required to assist the Authority. It is estimated that on account of the salaries and allowances of the Chairperson, Members, officers and other employees of the Appellate Authority, there would be a recurring expenditure of rupees twenty five lakhs per annum. Besides, on account of setting up of this Appellate Authority, hiring of office accommodation, purchase of office equipment and vehicles, etc., there may be some non-recurring expenditure which is not possible to estimate at this stage.

2. On enactment of the Bill, its certain provisions will result in revenue receipts. Sub-clause (4) of clause 12 and clause 43 provide for penalties, which may be imposed thus generating receipts on account of stamp duty, registration fee, court fee and composition fee. The amount that may be received under these provisions cannot be estimated at this stage.

3. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (b) of clause 3 of the Bill confers power on the Central Government to make addition to various types of uses of an apartment through rules.

Sub-clause (3) of clause 4 of the Bill empowers the Central Government to determine the percentage of non-residential use in a building which has been allotted for non-residential use.

Sub-clause (3) of clause 8 of the Bill empowers the Central Government to prescribe such scales by rules according to which the sub-lessee will be required to pay the composition fees in the case of breach of terms and conditions of sub-lease.

Item (b) of clause 9 of the Bill empowers the Central Government to prescribe by rules the form, the manner in which and the period within which the purchaser of an apartment shall execute and register an instrument giving an undertaking.

Sub-clause (5) of clause 12 of the Bill empowers the Central Government to prescribe the manner and the form of making an application by the apartment owner, allottee or transferee, to the competent authority.

Sub-clause (2) of clause 13 empowers the Central Government to prescribe the form and particulars of the Register of Deeds of Apartments to be kept in the Registration Office.

Sub-clause (2) of clause 14 empowers the Central Government to provide the manner in which an application may be made to the competent authority for the registration of an association.

Sub-clause (3) of clause 19 empowers the Central Government to fix the percentage at which the interest on the arrears, or unpaid common expenses, shall be recoverable.

Sub-clause (3) of clause 22 of the Bill provides that every Association of Apartment Owners shall collect tax imposed by the Government or a local authority from the apartment owners, the period and the manner in which the amount of such tax may be remitted to the Authority. The Central Government shall make necessary rules in this regard.

Clause 26 provides for the powers of the competent authority. The Central Government is being empowered to prescribe by rules some other matters in respect of which the competent authority may exercise the powers.

Clause 32 of the Bill empowers the Central Government to make rules in respect of salary and allowances and other terms and conditions of service including pension, gratuity and other retirement benefits of the Chairperson and other Members of the Appellate Authority.

Sub-clause (1) of clause 34 of the Bill empowers the Central Government to determine the nature and categories of the officers and other employees required to assist the Appellate Authority in the discharge of its functions.

Sub-clause (2) empowers the Central Government to determine through rules the salaries, allowances and condition of services of officers and other employees of the Appellate Authority. *Sub-clause (3)* empowers the Central Government by rules to provide the manner in which the officers and other employees of the Appellate Authority shall discharge their functions under the general superintendence of the Chairperson.

Sub-clause (3) of clause 35 of the Bill empowers the Central Government to prescribe by rules the form and the manner of making an appeal to the Appellate Authority and fee to be accompanied by such appeal.

Clause 36 provides that the Appellate Authority shall have the powers of a civil court under the Code of Civil Procedure, 1908 in respect of receiving evidence, issuing Commissions and requisitioning any public record. The Central Government is being empowered to prescribe some other matters in respect of which the Appellate Authority may exercise the powers.

Clause 48 empowers the Central Government to make rules for implementation of the provisions of the Act. The Central Government may, by rules, prescribe any other matter which it considers essential for implementing the provisions.

The rules made shall be laid, as soon as may be, after they are made, before each House of Parliament.

The matters in respect of which rules may be made are matters of detail and are essential for effective administration of the provisions of the Bill. It is difficult to provide for them in the Bill itself and the delegation of these legislative powers is therefore, of a normal character.

BILL No. 46 OF 2001

A Bill to provide for the constitution of a welfare fund for the benefit of advocates and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Advocates' Welfare Fund Act, 2001.

Short title, extent
and commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference in any such provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "advocate" means an advocate whose name has been entered in the State roll prepared and maintained by a State Bar Council under section 17 of the Advocates Act, 1961 and who is a member of a State Bar Association or State Advocates' Association;

(b) "appropriate Government" means,—

(i) in the case of advocates admitted on the roll of a Bar Council of a State, the State Government;

(ii) in the case of advocates admitted on the roll of a Bar Council of a Union territory, the Central Government;

(c) "cessation of practice" means removal of the name of an advocate from the State roll under section 26A of the Advocates Act, 1961;

25 of 1961

(d) "Chairperson" means the Chairperson of the Trustee Committee referred to in clause (a) of sub-section (3) of section 4;

(e) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

38 of 1949.

(f) "dependants" means the spouse, parents or minor children of a member of the Fund;

(g) "Fund" means the Advocates' Welfare Fund constituted under sub-section (1) of section 3;

(h) "insurer" shall have the meaning assigned to it in clause (9) of section 2 of the Insurance Act, 1938;

4 of 1938

(i) "member of the Fund" means an advocate admitted to the benefits of the Fund and who continues to be a member thereof under the provisions of this Act;

(j) "notification" means a notification published in the Official Gazette of the appropriate Government and the expression "notified" shall be construed accordingly;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "Schedule" means a Schedule to this Act;

(m) "scheduled bank" shall have the meaning assigned to it in clause (e) of section 2 of the Reserve Bank of India Act, 1934;

2 of 1934.

(n) "stamp" means the Advocates' Welfare Fund stamp printed and distributed under section 26,

(o) "State" means a State specified in the First Schedule to the Constitution and shall include a Union territory;

(p) "State Advocates' Association" means an association of advocates in a State recognised by the Bar Council of that State under section 16;

(q) "State Bar Association" means an association of advocates recognised by the Bar Council of that State under section 16;

(r) "State Bar Council" means a Bar Council referred to in section 3 of the Advocates Act, 1961;

25 of 1961

(s) "suspension of practice" means voluntary suspension of practice as an advocate or suspension of an advocate by a State Bar Council for misconduct;

(t) "Trustee Committee" means the Advocates' Welfare Fund Trustee Committee established under sub-section (1) of section 4;

(u) "Vakalatnama" includes memorandum of appearance or any other document by which an advocate is empowered to appear or plead before any court, tribunal or other authority;

(v) words and expressions used and not defined in this Act but defined in the Advocates Act, 1961 shall have the meanings respectively assigned to them in that Act.

25 of 1961.

CHAPTER II

CONSTITUTION OF ADVOCATES' WELFARE FUND

3. (1) The appropriate Government shall constitute a fund to be called the "Advocates' Welfare Fund".

Advocates'
Welfare Fund.

(2) There shall be credited to the Fund—

- (a) all amounts paid by a State Bar Council under section 15;
- (b) any other contribution made by a State Bar Council;
- (c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any State Bar Association, any State Advocates' Association or other association or institution, or any advocate or other person;
- (d) any grant which may be made by the Central Government or a State Government to the fund after due appropriation made in this behalf;
- (e) any sums borrowed under section 12;
- (f) all sums collected under section 18;
- (g) all sums received from the Life Insurance Corporation of India or any other insurer on the death of any member of the Fund under any Group Insurance Policy;
- (h) any profit or dividend or refund received from the Life Insurance Corporation of India or any other insurer in respect of policies of Group Insurance of the members of the Fund;
- (i) any interest or dividend or other return on any investment made out of any part of the Fund;
- (j) all sums collected by way of sale of stamps under section 26.

(3) The sums specified in sub-section (2) shall be paid to, or collected by, such agencies, at such intervals and in such manner, as may be prescribed.

CHAPTER III

ESTABLISHMENT OF TRUSTEE COMMITTEE

4. (1) With effect from such date as the appropriate Government may, by notification, appoint in this behalf, there shall be established a Trustee Committee to be called the "Advocates' Welfare Fund Trustee Committee".

Establishment
of Trustee
Committee.

(2) The Trustee Committee shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and shall, by the said name, sue and be sued.

(3) The Trustee Committee shall consist of —

- (a) the Advocate-General of a state - Chairperson,
ex officio;

Provided that where there is no Advocate-General of a State, the appropriate Government shall nominate a senior advocate to be the Chairperson;

- (b) the Secretary to the appropriate Government in its Law Department or Ministry - Member, *ex officio*;
- (c) the Secretary to the appropriate Government in its Home Department or Ministry - Member, *ex officio*;
- (d) the Chairman of the State Bar Council - Member, *ex officio*;
- (e) the Government Pleader or the Public Prosecutor as may be nominated by the appropriate Government - Member;
- (f) two advocates to be nominated by the State Bar Council - Members;
- (g) the Secretary of the State Bar Council - Secretary, *ex officio*.

(4) The Chairperson nominated under the proviso to clause (a) of sub-section (3) shall hold office for a period not exceeding three years from the date on which he enters upon his office.

(5) Every Member of the Trustee Committee nominated under clause (e) or clause (f) of sub-section (3) shall hold office for a period not exceeding three years from the date on which he enters upon his office.

Disqualifications and removal of Chairperson or Member of Trustee Committee.

5. (1) The appropriate Government shall remove from office the chairperson or any Member of the Trustee Committee, who—

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as the chairperson or a Member of the Trustee Committee; or

(c) has been convicted of an offence which, in the opinion of the appropriate Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member of the Trustee Committee; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest; or

(f) is, or at any time has been absent without leave of the Trustee Committee for more than three consecutive meetings of the Trustee Committee:

Provided that the Trustee Committee may, on sufficient ground condone the absence of such Chairperson or Member.

(2) No such Chairperson or Member of the Trustee Committee shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard.

Resignation by nominated Chairperson and Members of Trustee Committee and filling up of casual vacancy.

6. (1) The Chairperson referred to in sub-section (4) of section 4 or a Member nominated under clause (e) of sub-section (3) of that section may resign his office by giving three months' notice in writing to the appropriate Government and on such resignation being accepted by the appropriate Government such Chairperson or Member shall vacate his office.

(2) A Member nominated under clause (f) of sub-section (3) of section 4 may resign his office by giving three months' notice in writing to the State Bar Council and on such resignation being accepted by the State Bar Council such Member shall vacate his office.

(3) A casual vacancy in the office of the Chairperson or a Member referred to in sub-section (1) who has resigned may be filled up, as soon as may be, by the appropriate Government and the Chairperson or a Member so nominated shall hold office only so long as the Chairperson or the Member in whose place he is nominated would have been entitled to hold office if the vacancy did not occur.

(4) A casual vacancy in the office of a Member referred to in sub-section (2) who has resigned may be filled up, as soon as may be, by the State Bar Council and a Member so nominated shall hold office only so long as the Member in whose place he is nominated would have been entitled to hold office if the vacancy did not occur.

Vacancies, etc., not to invalidate proceedings of Trustee Committee.

7. No act or proceeding of the Trustee Committee shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Trustee Committee;

or

(b) any defect or irregularity in the nomination of a person acting as the Chairperson or a Member of the Trustee Committee; or

(c) any irregularity in the procedure of the Trustee Committee not affecting the merits of the case.

8. (1) The Trustee Committee shall meet at least once in every three calendar months and at least four such meetings shall be held in every year to transact business under this Act and the rules made thereunder.

Meetings of
Trustee
Committee.

(2) Three Members of the Trustee Committee shall form the quorum for a meeting of the Trustee Committee.

(3) The Chairperson of the Trustee Committee or, if for any reason, he is unable to attend a meeting of the Trustee Committee, any other Member chosen by the Members of the Trustee Committee present from amongst themselves at the meeting shall preside at the meeting.

(4) All questions which come up in a meeting of the Trustee Committee shall be decided by a majority vote of the Members of the Trustee Committee present and voting, and, in the event of an equality of votes, the Chairperson, or in his absence, the Member of the Trustee Committee presiding, shall have a second or casting vote.

9. The Chairperson referred to in sub-section (4) of section 4 and Members of the Trustee Committee referred to in clauses (e) and (f) of sub-section (3) of that section shall be entitled to be paid such travelling and daily allowances as are admissible to the members of the State Bar Council.

Travelling and
daily allowances
to nominated
Chairperson and
Members of
Trustee
Committee.
Vesting and
application of
Fund.

10. The Fund shall vest in, and be held and applied by, the Trustee Committee subject to the provisions, and for the purposes, of this Act.

11. (1) Subject to the provisions of this Act and any other law for the time being in force, the Trustee Committee shall administer the Fund.

Functions of
Trustee
Committee.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Trustee Committee shall—

(a) hold the amounts and assets belonging to the Fund in trust;

(b) receive applications for admission or re-admission as members to the Fund, and dispose of such applications within ninety days from the date of receipt thereof;

(c) receive applications from the members of the Fund, their nominees or legal heirs, as the case may be, for payment out of the Fund, conduct such enquiry as it deems necessary and dispose of the applications within five months from the date of receipt thereof;

(d) record in the minutes book of the Trustee Committee, its decisions on the applications;

(e) pay to the members of the Fund or their nominees or legal heirs, as the case may be, the amounts at the rates specified in Schedule I;

(f) send such periodical and annual reports as may be prescribed, to the appropriate Government and the State Bar Council;

(g) communicate to the applicants, by registered post with acknowledgment due or through electronic mode, the decisions of the Trustee Committee in respect of applications for admission or re-admission as members to the Fund or claims to the benefit of the Fund;

(h) do such other acts as are, or may be, required to be done under this Act and the rules made thereunder.

12. (1) The Trustee Committee may, with the prior approval of the appropriate Government and the State Bar Council, borrow, from time to time, any sum required for carrying out the purposes of this Act.

Borrowing and
investment.

(2) The Trustee Committee shall deposit all monies and receipts forming part of the Fund in any scheduled bank or invest the same in debt instruments of any corporation owned or controlled by the appropriate Government or in loans floated by the appropriate Government or in any other manner as the State Bar Council may, from time to time, direct with the prior approval of the appropriate Government.

Accounts and
audit.

(3) All amounts due and payable under this Act and all expenditure relating to the management and administration of the Fund shall be paid out of the Fund.

13. (1) The Trustee Committee shall maintain proper accounts and other relevant records and prepare an annual statement of accounts and annual report in such form and in such manner as may be prescribed.

(2) The accounts of the Trustee Committee shall be audited annually by a chartered accountant appointed by the State Bar Council.

(3) The accounts of the Trustee Committee as audited by the chartered accountant together with his audit report shall be forwarded to the State Bar Council by that Committee and the State Bar Council may issue such directions, as it deems fit, to the Trustee Committee in respect thereof.

(4) The Trustee Committee shall comply with the directions issued by the State Bar Council under sub-section (3).

(5) The Trustee Committee shall pay from the Fund the charges for the audit as may be fixed by the State Bar Council.

Powers and duties
of Secretary.

14. The Secretary of the Trustee Committee shall—

(a) be the chief executive authority of the Trustee Committee and responsible for carrying out its decisions;

(b) represent the Trustee Committee in all suits and proceedings for and against the Trustee Committee;

(c) authenticate by his signature all decisions and instruments of the Trustee Committee;

(d) operate bank account of the Trustee Committee jointly with the Chairperson;

(e) convene meetings of the Trustee Committee and prepare minutes of such meetings,

(f) attend meetings of the Trustee Committee with all the necessary records and information;

(g) maintain such forms, registers and other records as may be prescribed from time to time and do all correspondence relating to the Trustee Committee;

(h) prepare an annual statement of business transacted by the Trustee Committee during a financial year;

(i) do such other acts as are or may be directed by the Trustee Committee and the State Bar Council.

Payment of
certain monies
to Fund by State
Bar Council.

15. The State Bar Council shall pay to the Fund annually an amount equal to twenty per cent. of the enrolment fee received by it under clause (f) of section 24 of the Advocates Act, 1961.

25 of 1961.

CHAPTER IV

RECOGNITION OF ANY ASSOCIATION OF ADVOCATES

Recognition by a
State Bar Council
of any
association of
advocates.

16. (1) Any association of advocates known by any name which is registered as an association before the date of commencement of this Act may, before the date to be notified by a State Bar Council in this behalf, apply for recognition to the State Bar Council in such form as may be prescribed.

(2) Any association of advocates known by any name which is registered as an association on or after the date of commencement of this Act may, within three months from the date of its registration as an association, apply for recognition to the State Bar Council in such form as may be prescribed.

(3) Every application for recognition under sub-section (1) or sub-section (2) shall be accompanied by,—

(a) a copy of the rules or bye-laws of the association;

(b) names and addresses of office bearers of the association;

(c) a list of members of the association containing the name, address, age, enrolment number and date of enrolment with the State Bar Council and the ordinary place of practice of each member.

(4) The State Bar Council may, after such enquiry as it deems necessary, recognise the association and issue a certificate of recognition in such form as may be prescribed.

(5) The decision of the State Bar Council on any matter regarding recognition of an association under sub-section (4) shall be final.

Explanation — In this section, “registered” means registered or deemed to be registered under the Societies Registration Act, 1860 or any other law for the time being in force.

21 of 1860

17. (1) Every State Bar Association and State Advocates' Association shall on or before the 15th day of April of every year, furnish to the State Bar Council a list of its members as on the 31st day of March of that year.

Duties of State Bar Associations and State Advocates' Associations.

(2) Every State Bar Association and State Advocates' Association shall inform the State Bar Council of—

(a) any change in the membership including admissions and re-admissions within thirty days of such change;

(b) the death or other cessation of practice or voluntary suspension of practice of any of its members within thirty days from the date of occurrence thereof;

(c) such other matters as may be required by the State Bar Council from time to time.

CHAPTER V

MEMBERSHIP AND PAYMENT OUT OF ADVOCATES' WELFARE FUND

18. (1) Every advocate practising, before the commencement of this Act, in any court, tribunal or other authority in a State and being a member of a State Bar Association or a State Advocates' Association in that State, shall apply, within six months of the commencement of this Act, to the Trustee Committee for admission as a member of the Fund, in such form as may be prescribed.

Membership in Fund.

(2) Every person,—

(a) admitted as an advocate on the roll of a State Bar Council, after the commencement of this Act;

(b) practising in any court, tribunal or other authority in a State and being a member of a State Bar Association or a State Advocates' Association in that State, shall apply, within six months of his enrolment as an advocate to the Trustee Committee, for admission as a member of the Fund in such form as may be prescribed.

(3) On receipt of an application under sub-section (1) or sub-section (2), the Trustee Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or, for reasons to be recorded in writing, reject the application:

Provided that no order rejecting an application shall be passed unless the applicant has been given an opportunity of being heard.

(4) Every applicant shall pay an application fee of two hundred rupees along with the application to the account of the Trustee Committee.

(5) Every advocate, being a member of the Fund, shall pay an annual subscription of fifty rupees to the Fund on or before the 31st day of March of every year:

Provided that every advocate, who makes an application under sub-section (1) or sub-section (2), shall pay his first annual subscription within three months of his becoming a member of the Fund:

Provided further that a senior advocate shall pay an annual subscription of one thousand rupees.

(6) Any member of the Fund, who fails to pay the annual subscription for any year before the 31st day of March of that year, shall be liable to be removed from the membership in the Fund.

(7) A member of the Fund removed from the membership in the Fund under sub-section (6) may be re-admitted to the Fund, on payment of arrears along with re-admission fee of ten rupees, within six months from the date of such removal.

(8) Every member of the Fund shall, at the time of admission to the membership in the Fund, make nomination conferring on one or more of his dependants the right to receive, in the event of his death, any amount payable to the member under this Act.

(9) If a member of the Fund nominates more than one person under sub-section (8), he shall specify in the nomination, the amount or share payable to each of the nominees.

(10) A member of the Fund may, at any time, cancel a nomination by sending a notice in writing to the Trustee Committee.

(11) Every member of the Fund, who cancels his nomination under sub-section (10), shall make a fresh nomination along with registration fee of five rupees.

(12) Every member of the Fund, whose name has been removed from the State roll under section 26A of the Advocates Act, 1961, or who voluntarily suspends practice, shall, within fifteen days of such removal or suspension, intimate such removal or suspension to the Trustee Committee and if any member of the Fund fails to do so without sufficient reason, the Trustee Committee may reduce, in accordance with such principles as may be prescribed, the amount payable to that member under this Act.

25 of 1961.

Ex gratia grant to a member of Fund.

19. The Trustee Committee on an application made to it by a member of the Fund, and after being satisfied about the genuineness of the claim, may allow *ex gratia* grant to such member from the Fund—

(a) in the case of his hospitalisation or involving major surgical operation; or

(b) if he is suffering from tuberculosis, leprosy, paralysis, cancer, unsoundness of mind or from such other serious disease or disability.

Review.

20. The Trustee Committee may, on its own motion or on an application received from any person interested, within ninety days of the passing of any order by it under the provisions of this Act, review such order, if it was passed under any mistake, whether of fact or of law or in ignorance of any material fact:

Provided that the Trustee Committee shall not pass any order under this section adversely affecting any person unless such person has been given an opportunity of being heard.

Payment of amount on cessation of practice.

21. (1) Every advocate who has been a member of the Fund for a period of not less than five years shall, on his cessation of practice, be paid an amount at the rate specified in Schedule I:

Provided that where the Trustee Committee is satisfied that a member of the Fund ceases to practice within a period of five years from the date of his admission as a member of such Fund as a result of any permanent disability, the Trustee Committee may pay such member an amount at the rate specified in Schedule I.

(2) Where a member of the Fund dies before receiving the amount payable under sub-section (1), his nominee or legal heir, as the case may be, shall be paid the amount payable to the deceased member of the Fund.

Restriction on alienation, attachment, etc., of interest of member in Fund.

22. (1) The interest of any member in the Fund, or the right of a member of the Fund or his nominee or legal heir to receive any amount from the Fund, shall not be assigned, alienated, or charged and shall not be liable to attachment under any decree or order of any court, tribunal or other authority.

(2) No creditor shall be entitled to proceed against the Fund or the interest therein of any member of the Fund or his nominee or legal heir.

Explanation.—For the purposes of this section, “creditor” includes the State or an official assignee or official receiver appointed under the law relating to insolvency for the time being in force.

43 of 1961.

23. Notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains, the income accrued to the Fund constituted under sub-section (1) of section 3 shall be exempt from income-tax.

Exemption from income-tax.

24. The Trustee Committee may, for the welfare of the members of the Fund,—

(a) obtain, from the Life Insurance Corporation of India or any other insurer, policies of Group Insurance on the life of the members of the Fund; or

Group Life Insurance for members of Fund and other benefits.

(b) provide, in such manner as may be prescribed, for medical and educational facilities for the members of the Fund and their dependants; or

(c) provide monies to the members of the Fund for purchase of books; or

(d) provide monies to construct or maintain common facilities for the members of the Fund :

Provided that the Trustee Committee shall spend ten per cent. of the total annual subscription received under sub-section (5) of section 18 on the construction or maintenance of common facilities for the members of the Fund practising in the subordinate courts; or

(e) provide funds for any other purpose which the Trustee Committee may specify; or

(f) provide for such other benefits as may be prescribed.

25. (1) An appeal against any decision or order of the Trustee Committee shall lie to the State Bar Council.

Appeal against decision or order of Trustee Committee.

(2) The appeal shall be in the prescribed form and shall be accompanied by—

(a) a copy of the decision or order appealed against;

(b) a receipt evidencing payment of twenty-five rupees to the credit of the State Bar Council in any of the branches of a scheduled bank.

(3) The appeal shall be filed within thirty days from the date of receipt of the decision or order appealed against.

(4) The decision of the State Bar Council on such appeal shall be final.

CHAPTER VI

PRINTING, DISTRIBUTION AND CANCELLATION OF STAMPS

26. (1) The appropriate Government shall, on a request made by the State Bar Council in this behalf, cause to be printed and distributed Advocates' Welfare Fund Stamps of the value of five rupees or such other value, which may be prescribed, inscribing therein “Advocates' Welfare Fund Stamp”, in such design as may be prescribed.

Printing and distribution of Advocates' Welfare Fund Stamps by State Bar Council.

(2) Every stamp referred to in sub-section (1) shall be of the size 2.54 c.m. by 5.08 c.m. and sold to the advocates.

(3) The custody of the stamps shall be with the State Bar Council.

(4) The State Bar Council shall control the distribution and sale of the stamps through the State Bar Associations and the State Advocates' Associations.

(5) The State Bar Council, the State Bar Associations and the State Advocates' Associations shall keep proper accounts of the stamps in such form and manner as may be prescribed.

(6) The State Bar Associations and State Advocates' Associations shall purchase the stamps from the State Bar Council after paying the value thereof as reduced by ten per cent. of such value towards incidental expenses.

Vakalatnama to
bear stamps.

27. (1) Every advocate shall affix stamp of a value of—

(a) five rupees on every Vakalatnama filed by him in a District Court or a court subordinate to the District Court;

(b) ten rupees on every Vakalatnama filed by him in a Tribunal or other authority or a High Court or the Supreme Court;

Provided that the appropriate Government may prescribe the value of the stamps not exceeding twenty-five rupees to be affixed under this sub-section :

Provided further that the appropriate Government may prescribe different value of the stamps to be affixed on every Vakalatnama to be filed in a District Court, or a court subordinate to the District Court or a Tribunal or other authority or a High Court or the Supreme Court.

(2) The value of the stamp shall neither be the cost in a case nor be collected in any event from the client.

(3) Any contravention of the provisions of sub-section (1) or sub-section (2) by any advocate shall disentitle him either in whole or in part to the benefits of the Fund and the Trustee Committee shall report such contravention to the State Bar Council for appropriate action.

(4) Every stamp affixed on every Vakalatnama filed before a District Court or a court subordinate to the District Court or a tribunal or other authority or a High Court or the Supreme Court shall be cancelled in such manner as may be prescribed.

CHAPTER VII

MISCELLANEOUS

Certain persons
not to be eligible
for benefits

28. No senior advocate or a person, in receipt of pension from the Central Government or a State Government, shall be entitled to *ex gratia* grant under section 19 or payment of amount on his cessation of practice under section 21 or any benefit under clause (a) or clause (b) or clause (c) of section 24.

Protection of
action taken in
good faith.

29. No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Trustee Committee or the Chairperson or a Member or the Secretary of the Trustee Committee or the State Bar Council or any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Bar of jurisdiction
of civil courts.

30. No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Trustee Committee or the State Bar Council.

Power to summon
witnesses and take
evidence.

31. The Trustee Committee and the State Bar Council shall, for the purpose of any enquiry under this Act, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

5 of 1908.

(a) enforcing the attendance of any person or examining him on oath ;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

(e) any other matter which may be prescribed.

Power to amend
Schedules I and II.

32. (1) The appropriate Government may, on the recommendation of the Trustee Committee, by notification, and having due regard to the availability of the amount in the Fund, amend the rates specified in Schedule I.

(2) The Central Government may, as and when considered necessary, by notification, amend Schedule II.

Power of
appropriate
Government to
issue directions

33. (1) Without prejudice to the generality of the foregoing provisions of this Act, the Trustee Committee shall, in exercise of the powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to professional and administrative matters, as the appropriate Government may give in writing to it from time to time:

Provided that the Trustee Committee shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the appropriate Government, whether a question is one of policy or not, shall be final.

34. (1) If at any time the appropriate Government is of the opinion —

(a) that, on account of circumstances beyond the control of the Trustee Committee, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Trustee Committee has persistently defaulted in complying with any direction given by the appropriate Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the appropriate Government may, by notification and for reasons to be specified therein, supersede the Trustee Committee for such period, not exceeding six months, as may be specified in the notification and appoint, in consultation with the Chief Justice of the High Court having jurisdiction, a Judge of the High Court to be the Controller of the Trustee Committee:

Provided that before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Trustee Committee to make representations against the proposed supersession and shall consider the representations, if any of the Trustee Committee.

(2) Upon the publication of a notification under sub-section (1) superseding the Trustee Committee,—

(a) the Chairperson, Members and the Secretary of the Trustee Committee shall, as from the date of supersession, vacate their offices as such;

(b) all powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Trustee Committee shall, until the Trustee Committee is reconstituted under sub-section (3), be exercised and discharged by the Controller of the Trustee Committee; and

(c) all properties and Fund owned or controlled by the Trustee Committee shall, until the Trustee Committee is reconstituted under sub-section (3), vest in the appropriate Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Trustee Committee by a fresh appointment of its Chairperson, Members and Secretary of such Committee and in such case a person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament or before each House of the State Legislature, where it consists of two Houses or where such Legislature consists of one House, before that House, as the case may be, at the earliest.

35. (1) The Central Government, being the appropriate Government, may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the periodical and annual reports to be sent under clause (f) of section 11;

Power of appropriate Government to supersede Trustee Committee.

Power of Central Government to make rules.

(b) the form and the manner in which the annual statement of accounts and annual report shall be prepared under sub-section (1) of section 13;

(c) the forms, registers and other records to be maintained under clause (g) of section 14;

(d) the form in which an association of advocates may apply for recognition to the State Bar Council under sub-section (1) or sub-section (2) of section 16;

(e) the form in which a certificate of recognition shall be issued by the State Bar Council under sub-section (4) of section 16;

(f) the form in which an advocate shall apply for admission as a member of the Fund under sub-section (1) or sub-section (2) of section 18;

(g) the principles in accordance with which the amount payable to a member of the Fund be reduced under sub-section (12) of section 18;

(h) the manner of providing medical and educational facilities for the members of the Fund and their dependants under clause (b) of section 24;

(i) the other benefits to be provided under clause (f) of section 24;

(j) the form of appeal under sub-section (2) of section 25;

(k) the value and design of stamps to be printed and distributed under sub-section (1) of section 26;

(l) the form and the manner in which accounts of the stamps shall be kept under sub-section (5) of section 26;

(m) the value of stamps not exceeding twenty-five rupees as may be prescribed under the first proviso to sub-section (1) of section 27;

(n) the value of stamps to be affixed on every Vakalatnama under the second proviso to sub-section (1) of section 27;

(o) the manner of cancellation of stamps under sub-section (4) of section 27;

(p) any other matter which is to be, or may be, prescribed.

Power of State Government to make rules.

36. (1) The State Government, being the appropriate Government, may, by notification, make rules for carrying out the provisions of this Act and not inconsistent with the rules, if any, made by the Central Government.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the periodical and annual reports to be sent under clause (f) of section 11;

(b) the form and the manner in which the annual statement of accounts and annual report shall be prepared under sub-section (1) of section 13;

(c) the forms, registers and other records to be maintained under clause (g) of section 14;

(d) the form in which an association of advocates may apply for recognition to the State Bar Council under sub-section (1) or sub-section (2) of section 16;

(e) the form in which a certificate of recognition shall be issued by the State Bar Council under sub-section (4) of section 16;

(f) the form in which an advocate shall apply for admission as a member of the Fund under sub-section (1) or sub-section (2) of section 18;

(g) the principles in accordance with which the amount payable to a member of the Fund be reduced under sub-section (12) of section 18;

(h) the manner of providing medical and educational facilities for the members of the Fund and their dependants under clause (b) of section 24;

- (i) the other benefits to be provided under clause (f) of section 24;
- (j) the form of appeal under sub-section (2) of section 25;
- (k) the value and design of stamps to be printed and distributed under sub-section (1) of section 26;
- (l) the form and the manner in which accounts of the stamps shall be kept under sub-section (5) of section 26;
- (m) the value of stamps not exceeding twenty-five rupees as may be prescribed under the first proviso to sub-section (1) of section 27;
- (n) the value of stamps to be affixed on every Vakalatnama under the second proviso to sub-section (1) of section 27;
- (o) the manner of cancellation of stamps under sub-section (4) of section 27;
- (p) any other matter which is to be or may be prescribed.

37. (1) Every rule made under this Act by the Central Government and every notification issued under section 32, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Rules and notifications to be laid before Parliament or State Legislature.

(2) Every rule made under this Act by a State Government and every notification issued under section 32 shall be laid, as soon as may be after it is made, before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

38. The provisions of this Act shall not apply to the States in which the enactments specified in Schedule II are applicable

Saving.

SCHEDULE I

[See sections 21(1) and 32(1)]

Number of years as member of the Fund		Rate at which amount payable
(1)		(2)
30	...	Rs. 30,000
29	...	Rs. 29,000
28	...	Rs. 28,000
27	...	Rs. 27,000
26	...	Rs. 26,000
25	...	Rs. 25,000
24	...	Rs. 24,000
23	...	Rs. 23,000
22	...	Rs. 22,000
21	...	Rs. 21,000
20	...	Rs. 20,000
19	...	Rs. 19,000
18	...	Rs. 18,000
17	...	Rs. 17,000
16	...	Rs. 16,000
15	...	Rs. 15,000
14	...	Rs. 14,000
13	...	Rs. 13,000
12	...	Rs. 12,000
11	...	Rs. 11,000
10	...	Rs. 10,000
9	...	Rs. 9,000
8	...	Rs. 8,000
7	...	Rs. 7,000
6	...	Rs. 6,000
5	...	Rs. 5,000
4	...	Rs. 4,000
3	...	Rs. 3,000
2	...	Rs. 2,000
1	...	Rs. 1,000

SCHEDULE II

[See sections 32(2) and 38]

1. The Uttar Pradesh Advocates' Welfare Fund Act, 1974 (6 of 1974).
 2. The Bihar State Advocates' Welfare Fund Act, 1983 (16 of 1983).
 3. The Madhya Pradesh Adhivakata Kalyan Nidhi Adhiniyam, 1982 (9 of 1982).
 4. The Andhra Pradesh Advocates' Welfare Fund Act, 1987 (33 of 1987).
 5. The Orissa Advocates' Welfare Fund Act, 1987 (18 of 1987).
 6. The Rajasthan Advocates' Welfare Fund Act, 1987 (15 of 1987).
 7. The Tamil Nadu Advocates' Welfare Fund Act, 1987 (49 of 1987).
 8. The Gujarat Advocates Welfare Fund Act, 1991 (14 of 1991).
 9. The Goa Advocates Welfare Fund Act, 1995 (2 of 1997).
 10. The Assam Advocates' Welfare Fund Act, 1998 (XVIII of 1999).
 11. The Maharashtra Advocates' Welfare Fund Act, 1981 (LXI of 1981).
 12. The Himachal Pradesh Advocates Fund Act, 1996 (14 of 1996).
 13. The Kerala Advocates' Welfare Fund Act, 1980 (21 of 1980).
 14. The Karnataka Advocates' Welfare Fund Act, 1983 (2 of 1985).
 15. The West Bengal Advocates Welfare Fund Act, 1991 (XIII of 1991).
 16. The Jammu and Kashmir Advocates Welfare Fund Act, 1997 (XXVI of 1997).
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STATEMENT OF OBJECTS AND REASONS

Social security in the form of financial assistance to junior lawyers and welfare schemes for indigent or disabled advocates, has long been a matter of concern for the legal fraternity. Clause (a) of sub-section (2) of section 6 and clause (a) of sub-section (2) of section 7 of the Advocates Act, 1961, confer powers upon the State Bar Councils as well as the Bar Council of India, *inter alia*, to constitute through their rules one or more funds for the purpose of "giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates". Sub-section (3) of section 6 and sub-section (3) of section 7 of the Advocates Act further provide that a State Bar Council as well as the Bar Council of India may receive grants, donations, gifts or benefactions for the said purpose which shall be credited to the appropriate fund or funds constituted under sub-section (2) of the said sections. Welfare schemes have accordingly been introduced in some States. Most of the States have enacted legislations on the subject. However, there is neither any uniformity nor the said provisions are considered adequate. Moreover, the Advocates Act, 1961 does not authorise levy of any welfare fund stamp on *Vakalatnama*. There has, therefore, been felt a need for a Central legislation applicable to the Union territories and the States which do not have their own enactments on the subject, for constitution of "Advocates' Welfare Fund" by the appropriate Government. The Fund shall, *inter alia*, be composed of contributions made by a State Bar Council, any voluntary donation or contribution by the Bar Council of India, advocates' associations, other associations or institutions or persons, any grant made by the appropriate Government and sums collected by way of sale of "Advocates' Welfare Fund Stamps".

2 All practising advocates shall become members of the Fund on payment of an application fee and annual subscription. The Fund shall vest in, and be held and applied by, the Trustee Committee established by the appropriate Government. The Fund shall, *inter alia*, be used for making *ex gratia* grant to a member of the Fund in case of a serious health problem, payment of a fixed amount on cessation of practice and in case of death of a member, to his nominee or legal heir, medical and educational facilities for the members and their dependants, purchase of books and for common facilities for advocates. The income accrued to the Fund, shall be exempt from income-tax.

3 The Bill seeks to achieve the above objects

ARUN JAITLEY

NEW DELHI,
The 8th June, 2001.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 8/(1)/2001-IC, dated the 20th June, 2001 from Shri Arun Jaitley, Minister of Law, Justice and Company Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the aforesaid Bill, recommends the introduction of the Bill in the House under articles 117(1) and 274(1) of the Constitution

Notes on clauses

Clause 2.—This clause seeks to define certain expressions used in the Bill.

Clause 3.—This clause provides for constitution of Advocates' Welfare Fund by the appropriate Government. The amounts, contributions, donations, grants, sums, interest, profits, dividends and sums collected by way of sale of stamps, etc., referred to in sub-clause (2) of the said clause shall be credited to such Fund. The sums so credited shall be paid to, or collected by such agencies, at such intervals and in such manner as may be specified by the rules made by the appropriate Government.

Clause 4.—This clause provides for establishment of a Trustee Committee to be called the Advocates' Welfare Fund Trustee Committee which shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and shall, by the said name, sue and be sued. The Trustee Committee shall consist of a Chairperson who shall be the Advocate-General of a State. Where there is no Advocate-General of a State, the appropriate Government shall nominate a senior advocate to be the Chairperson of the Trustee Committee. The Secretary to the appropriate Government in the Law Department or Ministry, the Secretary to the appropriate Government in the Home Department or Ministry and the Chairman of the State Bar Council shall be *ex officio* Members of the Trustee Committee. The Government Pleader or the Public Prosecutor nominated by the appropriate Government and two advocates nominated by the State Bar Council shall also be the Members of the Trustee Committee. The Secretary of the State Bar Council shall be the *ex officio* Secretary of the Trustee Committee. A senior advocate nominated by the appropriate Government as the Chairperson and the Government Pleader or the Public Prosecutor nominated by the appropriate Government, and two advocates, nominated by the State Bar Council as Members, shall hold office as such Chairperson or Members of the Trustee Committee for a period not exceeding three years from the date they enter upon their office.

Clause 5.—This clause contains provisions for disqualifications and removal of the Chairperson and Members of the Trustee Committee.

Clause 6.—This clause contains provisions for resignation by the Chairperson nominated by the appropriate Government and the Members nominated by the appropriate Government and the State Bar Council and for filling up of casual vacancies in the office of the Chairperson or a Member.

Clause 7.—This clause provides that no act or proceeding of the Trustee Committee shall be invalid merely by reason of any vacancy in or any defect in the constitution of, the Trustee Committee or any defect or irregularity in the nomination of a person acting as the Chairperson or a Member of the Trustee Committee or any irregularity in the procedure of the Trustee Committee not affecting the merits of the case.

Clause 8.—This clause contains provisions relating to meetings of the Trustee Committee. It provides that the Trustee Committee shall meet at least once in every three calendar months and at least four such meetings shall be held in every year to transact the business under the proposed legislation and rules made thereunder. Three Members of the Trustee Committee shall form the quorum for its meetings. All questions in a meeting of the Trustee Committee shall be decided by a majority vote of its Members present and voting and in the event of an equality of votes, the Chairperson or in his absence the Member of the Trustee Committee presiding, shall have a second or casting vote.

Clause 9.—This clause contains provisions relating to travelling and daily allowances payable to the Chairperson and Members of the Trustee Committee referred to in that clause.

Clause 10.—This clause contains provisions relating to vesting and application of the Fund. It provides that the Fund shall vest in the Trustee Committee which shall apply it for the purposes of the proposed legislation.

Clause 11.—This clause provides for the functions of the Trustee Committee. The functions of the Trustee Committee shall be to hold the amounts and assets belonging to the Fund in trust, receive applications for admission or re-admission as members to the Fund and dispose of such applications within ninety days from the date of receipt thereof, receive applications from the members of the Fund, their nominees or legal heirs, as the case may be, for payment out of the Fund, conduct such enquiry as it deems necessary and dispose of the applications within five months from the date of receipt thereof, record in the minutes book of the Trustee Committee, its decisions on the applications, pay to the members of the Fund or their nominees or legal heirs the amounts at the rates specified in Schedule I, send such periodical and annual reports as may be prescribed, to the appropriate Government and the State Bar Council, communicate to the applicants by registered post with acknowledgment due or through electronic mode, the decisions of the Trustee Committee in respect of applications for admission or re-admission as members to the Fund or claims to the benefit of the Fund and do such other acts as are, or may be, required to be done under the proposed legislation and the rules made thereunder.

Clause 12.—This clause, inter alia contains provisions relating to borrowing and investment by the Trustee Committee. It confers power upon the Trustee Committee to borrow, with the prior approval of the appropriate Government and the State Bar Council, any sum required for carrying out the purposes of the proposed legislation. The Trustee Committee is required to deposit all monies and receipts forming part of the Fund in any scheduled bank or invest the same in debt instruments of any corporation owned or controlled by the appropriate Government or in loans floated by the appropriate Government or in any other manner as the State Bar Council may, from time to time, direct with the prior approval of the appropriate Government.

Clause 13.—This clause contains provisions for maintaining proper accounts and other relevant records and preparation of annual statement of accounts and annual report by the Trustee Committee in such form and in such manner as may be prescribed. The accounts of the Trustee Committee are required to be audited annually by a chartered accountant appointed by the State Bar Council and such accounts with the audit report of the chartered accountant shall be forwarded to the State Bar Council by that Committee. The charges for the audit of the accounts shall be such as may be fixed by the State Bar Council and shall be paid from the Fund.

Clause 14.—This clause provisions relating to powers and duties of the Secretary of the Trustee Committee. It provides that the Secretary of the Trustee Committee shall (a) be the chief executive authority of the Trustee Committee and responsible for carrying out its decisions; (b) represent the Trustee Committee in all suits and proceedings for and against the Trustee Committee; (c) authenticate by his signature all decisions and instruments of the Trustee Committee; (d) operate the bank account of the Trustee Committee jointly with the Chairperson; (e) convene meetings of the Trustee Committee and prepare minutes of such meetings; (f) attend meetings of the Trustee Committee with all necessary records and information; (g) maintain such forms, registers and other records as may be prescribed from time to time and do all correspondence relating to the Trustee Committee; (h) prepare an annual statement of business transacted by the Trustee Committee during every financial year; (i) do such other acts as are or may be directed by the Trustee Committee and the State Bar Council.

Clause 15.—This clause provides that the State Bar Council shall pay to the Fund annually an amount equal to twenty per cent. of the enrolment fee received by it under clause (f) of section 24 of the Advocates Act, 1961.

Clause 16.—This clause contains provisions relating to recognition by a State Bar Council of any State Advocates' Association. Any association of advocates registered before the enactment of the proposed legislation may apply for recognition to the State Bar Council before the date notified by it. Any such association registered after the enactment of the proposed legislation may apply for recognition to the State

Bar Council within three months from the date of registration of such association. Every such association recognised by the State Bar Council shall be issued a certificate of recognition by such State Bar Council. The decision of the State Bar Council in respect of recognition of such association shall be final. This clause also contains procedure for recognition of such association by the State Bar Council.

Clause 17.—This clause contains duties of every State Bar Association and State Advocates' Association. The duties, *inter alia*, include furnishing to the State Bar Council list of its members as on the 31st day of March of every year and also informing changes in the list of members.

Clause 18.—This clause contains provisions relating to membership in the Fund. Every advocate practising before the commencement of the proposed legislation in any court, tribunal or other authority in a State and being a member of the State Bar Association or a State Advocates' Association in that State shall apply within six months after the proposed legislation to the Trustee Committee for admission as a member of the Fund. Every person admitted as an advocate on the roll of State Bar Council after the commencement of the proposed legislation and practising in any court, tribunal or other authority in a State and being a member of a State Bar Association or a State Advocates' Association in that State shall apply within six months of his enrolment as an advocate to the Trustee Committee for admission as a member of the Fund. Every applicant is required to pay an application fee of two hundred rupees along with the application. Every advocate after being admitted as a member of the Fund shall pay an annual subscription of fifty rupees to the Fund on or before the 31st March of every year. Every advocate shall pay his first annual subscription within three months of his becoming member of the Fund. Every senior advocate is required to pay an annual subscription of one thousand rupees to the Fund. This clause further, *inter alia*, contains provisions relating to removal of a member from the membership of the Fund, restoration of his membership to the Fund, nomination by such member to the Fund and cancellation thereof.

Clause 19.—This clause confers powers upon the Trustee Committee to allow *ex-gratia* grant from the Fund to a member of the Fund in the case of his hospitalisation or involving in major surgical operation or his suffering from tuberculosis, leprosy, paralysis, cancer, unsoundness of mind or from such other serious disease or disability.

Clause 20.—This clause confers power upon the Trustee Committee to review in certain cases the order passed by it under the provisions of the proposed legislation.

Clause 21.—This clause provides that every advocate who has been a member of the Fund for a period of not less than five years shall, on cessation of his practice, be paid an amount at the rate specified in Schedule I to the Bill. However, where the Trustee Committee is satisfied that a member of the Fund ceases to practice within a period of five years from the date of his admission as a member of the Fund as a result of any permanent disability, the Trustee Committee may pay such member an amount at the rates specified in the said Schedule. If a member of the Fund dies before receiving the amount payable under sub-clause (1) of this clause, his nominee or legal heir, as the case may be, shall be paid the amount payable to the deceased member of the Fund.

Clause 22.—This clause contains provisions relating to restriction on alienation, attachment, etc., of interest of any member in the Fund. It is provided that the interest of any member in the Fund or the right of a member of the Fund or his nominee or legal heir to receive any amount from the Fund, shall not be assigned, alienated, or charged and shall not be liable to attachment under any decree or order of any court, tribunal or other authority. No creditor shall be entitled to proceed against the Fund or the interest therein of any member of the Fund or his nominee or legal heir. For the purposes of this clause, "creditor" includes the State, or an official assignee or official receiver appointed under the law relating to insolvency for the time being in force.

Clause 23.—This clause grants exemption from income-tax on income, profits or gains or the income accrued to the Fund constituted under sub-clause (1) of clause 3.

Clause 24.—This clause contains provisions relating to Group Life Insurance for members of the Fund and other benefits to the members. This clause provides that the Trustee Committee, *inter alia*, may, for the welfare of the members of the Fund, obtain from the Life Insurance Corporation of India or any other insurer, policies of Group Insurance on the life of the members of the Fund; provide in such manner as may be prescribed for medical and educational facilities for the members of the Fund and their dependants and provide for such other benefits as may be prescribed; provide monies to advocates for purchase of books or provide monies to construct or maintain common facilities for the members of the Fund. The Trustee Committee shall spend ten per cent. of the total annual subscription received under sub-clause (5) of clause 18 on the construction or maintenance of common facilities for the members of the Fund practising in subordinate courts.

Clause 25.—This clause provides for an appeal to the State Bar Council against the decision or order of the Trustee Committee and also provides for the procedure for making such appeal.

Clause 26.—This clause contains provisions relating to printing and distribution of Advocates' Welfare Fund Stamps by the State Bar Council. This clause provides that the appropriate Government shall, on a request made by the State Bar Council in this behalf cause to be printed and distributed Advocates' Welfare Fund Stamps of the value of five rupees or such other amount, which may be prescribed. Every such stamp shall be inscribed "Advocates Welfare Fund Stamp" in such design as may be prescribed. The stamps shall be of the size 2.54 c.m. by 5.08 c.m. and sold only to advocates and the custody of such stamps shall be with the State Bar Council. It is also provided that the State Bar Council shall control the distribution and sale of the stamps through the State Bar Associations and the State Advocates' Associations. The State Bar Council, the State Bar Associations and State Advocates' Associations are required to keep proper accounts of the stamps in such form and manner as may be prescribed. The State Bar Associations and the State Advocates' Associations shall purchase the stamps from the State Bar Council after paying the value thereof ten per cent. as reduced by of such value towards incidental expenses.

Clause 27.—This clause provides that every advocate shall affix stamp of a value of five rupees on every Vakalatnama filed by him in a District Court or the courts subordinate to a District Court and ten rupees on every Vakalatnama filed by him in a tribunal or other authority or a High Court or the Supreme Court. However, the appropriate Government may prescribe the value of stamp not exceeding twenty five rupees to be affixed on a Vakalatnama. The appropriate Government has been conferred power to prescribe different value of stamps to be affixed on every Vakalatnama to be filed in a District Court, or a court subordinate to the District Court or a tribunal or other authority or a High Court or the Supreme Court. This clause further provides that the value of the stamp shall neither be the cost in a case nor be collected in any event from the client. Any contravention of the provisions of sub-clause (1) or sub-clause (2) of this clause by any advocate shall disentitle him either in whole or in part to the benefits of the Fund and the Trustee Committee shall report such contravention to the State Bar Council for appropriate action. Every stamp, affixed on every Vakalatnama filed before a District Court or a Court subordinate to the District Court or a tribunal or other authority or a High Court or the Supreme Court shall be cancelled in such manner as may be prescribed.

Clause 28.—This clause provides that no senior advocate or a person in receipt of pension from the Central Government or a State Government shall be entitled to *ex-gratia* grant under clause 19 or payment of amount on his cessation of practice under clause 21 or any benefit under sub-clause (a) or sub-clause (b) or sub-clause (c) of clause 24.

Clause 29.—This clause provides that no suit or other proceeding shall lie against the appropriate Government or the Trustee Committee or the Chairperson or Members or the Secretary of the Trustee Committee or the State Bar Council or any person for any thing which is in good faith done or intended to be done under the proposed legislation or rules made thereunder.

Clause 30.—This clause provides that no civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under the proposed legislation required to be settled, decided or dealt with or to be determined by the Trustee Committee or the State Bar Council.

Clause 31.—This clause confers power upon the Trustee Committee and the State Bar Council to summon witnesses and take evidence. This clause provides that the Trustee Committee and the State Bar Council shall, for the purpose of any enquiry under the proposed legislation, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 for enforcing the attendance of any person or examining him on oath, requiring the discovery and production of documents; receiving evidence on affidavit or issuing commissions for the examination of witnesses or any other matter which may be prescribed.

Clause 32.—This clause confers power upon the appropriate Government to amend, by notification, the rates specified in Schedule I which specifies the amount payable to the member of the Fund in certain cases. This power shall be exercised by the appropriate Government on the recommendation of the Trustee Committee and having due regard to the availability of the amount of the Fund. Sub-clause (2) of this clause confers power upon the Central Government to amend Schedule II which specifies certain Advocates' Welfare Funds constituted under the State Acts specified in the Schedule.

Clause 33.—This clause provides that the Trustee Committee shall, in exercise of the powers or the performance of its functions under the proposed legislation, be bound by such directions on questions of policy, other than those relating to professional and administrative matters, as the appropriate Government may give in writing to it from time to time. However, the Trustee Committee shall, as far as practicable, be given an opportunity to express its views before any direction is given under this clause. The decision of the appropriate Government, whether a question is one of policy or not, shall be final.

Clause 34.—This clause confers power upon the appropriate Government to supersede, by notification, the Trustee Committee under the circumstances specified under that clause and appoint in consultation with the Chief Justice of the High Court having jurisdiction, a Judge of the High Court to be the Controller of the Trustee Committee till such time the Trustee Committee is reconstituted. Every such notification is required to be laid before each House of Parliament or before each House of State Legislature, where it consists of two Houses or where such Legislature consists of one House, before that House, as the case may be.

Clause 35.—This clause confers power upon the Central Government to make rules in respect of the matters specified in that clause.

Clause 36.—This clause confers power upon the State Government to make rules in respect of the matters specified in that clause.

Clause 37.—This clause requires that rules made under the proposed legislation and every notification issued under clause 32 shall be laid before each House of Parliament or before each House of State Legislature, where it consists of two Houses or where such Legislature consists of one House, before that House, as the case may be.

Clause 38.—This clause provides that the provisions of the proposed legislation shall not be applicable in the States to which the enactments specified in Schedule II to the Bill apply.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 32 confers power upon the Central Government and a State Government to amend, on the recommendation of the Trustee Committee, by notification, the rates specified in Schedule I. Sub-clause (2) of the said clause empowers the Central Government to amend, by notification, Schedule II which saves certain welfare funds constituted by certain State enactments. Every such notification issued by the Central Government shall be laid, as soon as may be, after it is issued, before each House of Parliament. Every notification issued by a State Government shall be laid, as soon as may be, after it is issued before each House of State Legislature, where it consists of two Houses or where such Legislature consists of one House, before that House.

2. Clause 35 of the Bill confers powers upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made relate, *inter alia*, to provide for the periodical and annual reports to be sent under clause (f) of section 11; the form and the manner in which the annual statement of accounts and annual report shall be prepared under sub-section (1) of section 13; the forms, registers and other records to be maintained under clause (g) of section 14; the form in which an association of advocates may apply for recognition to the State Bar Council under sub-section (1) or sub-section (2) of section 16; the form in which a certificate of recognition shall be issued by the State Bar Council under sub-section (4) of section 16; the form in which an advocate shall apply for admission as a member of the Fund under sub-section (1) or sub-section (2) of section 18; the principles in accordance with which the amount payable to a member of the Fund be reduced under sub-section (12) of section 18; the manner of providing medical and educational facilities for the members of the Fund and their dependants under clause (b) of section 24; the other benefits to be provided under clause (f) of section 24; the form of appeal under sub-section (2) of section 25; the value and design of stamps to be printed and distributed under sub-section (1) of section 26; the form and the manner in which accounts of the stamps shall be kept under sub-section (5) of section 26; the value of stamps not exceeding twenty-five rupees as may be prescribed under the first proviso to sub-section (1) of section 27; the value of stamps to be affixed on every Vakalatnama under the second proviso to sub-section (1) of section 27; the manner of cancellation of stamps under sub-section (4) of section 27; any other matter which is to be or may be prescribed.

3. Clause 36 of the Bill confers powers upon the State Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made relate, *inter alia*, to provide for the periodical and annual reports to be sent; under clause (f) of section 11; the form and manner in which the annual statement of accounts and annual report shall be prepared under sub-section (1) of section 13; the forms, registers and other records to be maintained under clause (g) of section 14; the form in which an association of advocates may apply for recognition to the State Bar Council under sub-section (1) or sub-section (2) of section 16; the form in which a certificate of recognition shall be issued by the State Bar Council under sub-section (4) of section 16; the form in which an advocate shall apply for admission as member of the Fund under sub-section (1) or sub-section (2) of section 18; the principles in accordance with which the amount payable to a member of the Fund be reduced under sub-section (12) of section 18; the manner of providing medical and educational facilities for the members of the Fund and their dependants under clause (b) of section 24; the other benefits to be provided under clause (f) of section 24; the form of appeal under sub-section (2) of section 25; the value and design of stamps to be printed and distributed under sub-section (1) of section 26; the form and the manner in which accounts of the stamps shall be kept under sub-section (5) of section 26; the value of stamps not exceeding twenty-five rupees as may be prescribed under the first proviso to sub-section (1) of section 27; the value of stamps to be affixed on every Vakalatnama under the second proviso to sub-section (1) of section 27; the manner of cancellation of stamps under sub-section (4) of section 27; any other matter which is to be or may be prescribed.

4. The rules made by the Central Government shall be laid, as soon as may be, after they are made, before each House of Parliament.

5. The rules made by the State Government shall be laid, as soon as may be after they are made, before each House of State Legislature, where it consists of two Houses or where such Legislature consists of one House, before that House.

6. The matters in respect of which rules may be made and notifications may be issued under section 32 are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

G.C. MALHOTRA,
Secretary-General.

